

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
3 MARSHALL DIVISION
4 PERSONALIZED MEDIA) (
5 COMMUNICATIONS, LLC,) (
6 PLAINTIFF,) (CIVIL ACTION NO.
7) (2:15-CV-1366-JRG-RSP
8 VS.) (MARSHALL, TEXAS
9) (
10 APPLE INC.,) (MARCH 15, 2021
11 DEFENDANT.) (1:53 P.M.

12 TRANSCRIPT OF JURY TRIAL
13 BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
14 UNITED STATES CHIEF DISTRICT JUDGE
15

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01:26:07
01:26:07

01:26:07 1 (Jury out.)

01:26:07 2 COURT SECURITY OFFICER: All rise.

01:26:08 3 THE COURT: Be seated, please.

01:53:00 4 Counsel, in the last trial, I authorized up to
01:53:10 5 four people at each counsel table. I'm going to do that in
01:53:13 6 this trial. I know you had three at each counsel table for
01:53:16 7 voir dire. But now that your entire trial teams are here
01:53:21 8 in the courtroom, I have no problem with you adding a
01:53:23 9 fourth person at each table, if you'd like to. But let's
01:53:28 10 don't go over four.

01:53:29 11 All right. I'm prepared to give my preliminary
01:53:31 12 instructions to the jury.

01:53:33 13 Are there any issues we need to take up before
01:53:35 14 that?

01:53:36 15 MR. KLINE: Your Honor, the only thing is we've
01:53:39 16 been discussing amongst us a stipulation regarding the fact
01:53:44 17 that the accused technology has been the same with respect
01:53:47 18 to the issues that bear on infringement in this case. And
01:53:52 19 Judge Payne made an order that we would read a stipulation
01:53:54 20 into the record. We're just working out what the details
01:53:58 21 of that stipulation will be, so I -- with apologies, we
01:54:00 22 don't have it ready to read right now, Your Honor, but at
01:54:03 23 some point we will want to do that.

01:54:06 24 THE COURT: Whenever you've reached a complete
01:54:08 25 stipulation, let me know, and I'll be glad to talk then

01:54:11 1 about the most opportune time to present it to the jury.

01:54:16 2 MR. KLINE: Thank you, Your Honor.

01:54:16 3 THE COURT: Anything from the Defendant before I
01:54:18 4 bring in the jury?

01:54:26 5 MR. SERNEL: No, Your Honor.

01:54:28 6 THE COURT: All right. Let's bring in the jury,
01:54:33 7 please.

01:54:33 8 COURT SECURITY OFFICER: All rise.

01:54:34 9 (Jury in.)

01:54:37 10 THE COURT: Welcome back, ladies and gentlemen.
01:54:52 11 Please have a seat.

01:54:52 12 Thank you for being on time, ladies and gentlemen.
01:55:05 13 We're going to try to keep things running on generally the
01:55:08 14 time frame that I told you about during jury selection.

01:55:10 15 I now have some preliminary instructions that I
01:55:13 16 need to give you on the record before we start with the
01:55:19 17 opening statements from the attorneys and then get on to
01:55:21 18 the evidence in the case.

01:55:21 19 You've now been sworn as the jurors in this case.
01:55:26 20 And as the jury, you are the sole judges of the facts and,
01:55:31 21 as such, you will make the final determination about what
01:55:35 22 the facts are in this case.

01:55:36 23 As the judge, I will give you instructions on the
01:55:39 24 law, I will deal with and decide any questions of law,
01:55:44 25 evidence, or procedure that might arise during the course

01:55:46 1 of the trial, and I'm responsible for managing the flow of
01:55:51 2 the evidence efficiently and maintaining the proper decorum
01:55:54 3 of the courtroom.

01:55:55 4 At the end of the evidence, I'll give you detailed
01:55:58 5 instructions about the law to apply in deciding this case,
01:56:03 6 and I'll give you a list of questions that you are then to
01:56:05 7 answer. This list of questions is called the verdict form,
01:56:10 8 and your answers to the questions will need to be
01:56:14 9 unanimous, and those unanimous answers to those questions
01:56:17 10 will constitute the jury's verdict in this case.

01:56:22 11 Now, let me briefly tell you what the case is
01:56:24 12 about.

01:56:25 13 As has been mentioned, this case involves a
01:56:28 14 dispute regarding one certain United States patent. I know
01:56:32 15 that you've each seen the video, the film prepared by the
01:56:36 16 Federal Judicial Center, but I need to give you some
01:56:39 17 additional instructions now and on the record about a
01:56:41 18 patent and how one is obtained.

01:56:43 19 Patents are granted or denied by the United States
01:56:48 20 Patent and Trademark Office, an agency of the United States
01:56:53 21 Government, which you will hear referred to throughout the
01:56:55 22 trial for short as the PTO.

01:56:58 23 A valid United States patent gives the
01:57:01 24 patentholder the right for a limited term to prevent others
01:57:06 25 from making, using, offering to sell, or selling the

01:57:09 1 patented invention within the United States or from
01:57:13 2 importing it into the United States without the
01:57:16 3 patentholder's permission.

01:57:17 4 A patent is a form of property called intellectual
01:57:21 5 property. And like all other forms of property, a patent
01:57:26 6 can be bought or sold.

01:57:27 7 A violation of the patentholder's rights is called
01:57:31 8 infringement. The patentholder may try to enforce a patent
01:57:35 9 against persons it believes to be infringers by filing a
01:57:39 10 lawsuit in federal court, and that's what we have before us
01:57:42 11 in this case.

01:57:43 12 The process of obtaining a patent is called patent
01:57:48 13 prosecution. To obtain a patent, one must first file an
01:57:53 14 application with the PTO. As I've mentioned, the PTO is an
01:57:58 15 agency of the United States Government, and it employs
01:58:00 16 trained examiners who review applications for patents.

01:58:03 17 The application submitted to the PTO includes
01:58:08 18 within it what's called a specification. The specification
01:58:13 19 contains a written description of the claimed invention
01:58:16 20 telling what the invention is, how it works, how to make
01:58:20 21 it, and how to use it.

01:58:21 22 The specification concludes or ends with one or
01:58:25 23 more numbered sentences. These numbered sentences are the
01:58:29 24 patent claims. When a patent is granted by the PTO, it's
01:58:34 25 the claims, ladies and gentlemen, that define the

01:58:37 1 boundaries of its protection and give notice to the public
01:58:41 2 of those boundaries.

01:58:42 3 Now, patent claims may exist in two forms referred
01:58:47 4 to as independent claims and as dependent claims. An
01:58:53 5 independent patent claim does not refer to any other claim
01:58:57 6 in the patent. It's independent. It stands alone. It's
01:59:01 7 not necessary to look at any other claim to determine what
01:59:05 8 an independent claim covers.

01:59:06 9 On the other hand, a dependent claim refers to at
01:59:11 10 least one other claim in the patent. A dependent claim
01:59:16 11 includes each of the limitations or elements of the other
01:59:20 12 claim or claims to which it refers or as we sometimes say
01:59:25 13 from which it depends, as well as those additional
01:59:28 14 limitations or elements recited within the dependent claim
01:59:32 15 itself.

01:59:33 16 Therefore, to determine what a dependent patent
01:59:37 17 claim covers, it's necessary to look at both the dependent
01:59:45 18 claim itself and the independent claim or claims from which
01:59:48 19 it refers or from which it depends.

01:59:50 20 Now, the claims of the patent-in-suit use the word
01:59:55 21 "comprising." Comprising means including or containing.

02:00:00 22 A claim that includes the word "comprising" is not
02:00:05 23 limited to the methods or devices having only the elements
02:00:08 24 that are recited in the claim but also covers methods or
02:00:12 25 devices that add additional elements.

02:00:15 1 Let me give you an example. Take, for example, a
02:00:18 2 claim that covers a table. If the claim recites a table
02:00:23 3 comprising a tabletop, legs, and glue, the claim would
02:00:28 4 cover any table that contains these structures, even if the
02:00:32 5 table also contains other or additional structures, such as
02:00:37 6 a leaf to go in the tabletop or wheels to go on the ends of
02:00:41 7 the legs.

02:00:41 8 Now, that's a simple example using the word
02:00:45 9 "comprising" and what it means. In other words, ladies and
02:00:49 10 gentlemen, it can have other features in addition to those
02:00:51 11 that are covered by the patent.

02:00:53 12 Now, to help you follow the evidence, I'm going to
02:00:56 13 give you a brief summary of the positions of the two
02:00:59 14 competing parties.

02:01:00 15 As you know, the party that initiates or brings a
02:01:04 16 lawsuit is called the Plaintiff. The Plaintiff in this
02:01:06 17 case is Personalized Media Communications, LLC, which
02:01:12 18 you're going to hear referred to throughout the trial as
02:01:14 19 either Plaintiff or as PMC. You may hear them called
02:01:22 20 Personalized Media, but I suspect you're mostly going to
02:01:26 21 hear them called the Plaintiff or PMC.

02:01:29 22 And as you know, the party against whom a lawsuit
02:01:33 23 is initiated or brought is called the Defendant, and the
02:01:35 24 Defendant in this case is Apple Inc., which you're going to
02:01:37 25 probably hear referred to either simply as the Defendant or

02:01:40 1 as Apple.

02:01:41 2 Now, as I told you during jury selection, this
02:01:43 3 case is a case of alleged patent infringement. And as I
02:01:47 4 may have mentioned, there is only one United States patent
02:01:51 5 that's been asserted in this case. That patent is United
02:01:55 6 States Patent No. 8,191,091. And as you may know, patents
02:02:02 7 are commonly referred to by their last three digits in the
02:02:06 8 patent number.

02:02:07 9 So in this case, U.S. Patent No. 8,191,091 --
02:02:12 10 excuse me, 8,191,091 will be referred to and you're going
02:02:21 11 to hear it referred to regularly as the '091 patent, the
02:02:25 12 last three digits. You may also hear it referred to from
02:02:29 13 time to time throughout the case as the patent-in-suit, and
02:02:30 14 you may also hear others refer to it as the asserted
02:02:36 15 patent. So whether it's the '091 patent, the
02:02:38 16 patent-in-suit, or the asserted patent, those all refer to
02:02:42 17 the one patent that is at issue in this case. And that
02:02:47 18 patent generally relates to programming communications.

02:02:51 19 Now, the Plaintiff, PMC, contends that the
02:02:54 20 Defendant, Apple, is willfully infringing certain claims of
02:03:00 21 the patent-in-suit by importing, making, or selling
02:03:04 22 products that include their patented technology.

02:03:07 23 PMC also contends that Apple has induced or
02:03:13 24 contributed to and continues to induce or contribute to
02:03:18 25 infringement by others.

02:03:19 1 PMC also contends that it is entitled to money
02:03:24 2 damages as a result of that infringement.

02:03:27 3 The Defendant, Apple, denies that it is infringing
02:03:31 4 the claims of the patent-in-suit.

02:03:35 5 Now, ladies and gentlemen, I know there are many
02:03:37 6 new words and concepts that have been thrown at you since
02:03:41 7 you arrived here for jury duty this morning. I'm going to
02:03:45 8 define a lot of those words and concepts for you as we go
02:03:48 9 through these instructions. The attorneys from both sides
02:03:51 10 of the case are going to mention them and discussing
02:03:55 11 them -- and discuss them in their opening statements.

02:03:57 12 The witnesses that you hear called during the
02:03:59 13 trial are going to help you through their testimony to
02:04:04 14 understand these words and concepts. So, please, do not
02:04:07 15 feel overwhelmed at this point. I promise you, it will all
02:04:10 16 come together as we go through the trial.

02:04:16 17 Now, one of your jobs in this case is to decide
02:04:18 18 whether or not the asserted claims of the asserted patent
02:04:22 19 have been infringed. If you decide that any claim of the
02:04:27 20 patent-in-suit has been infringed by the Defendant, Apple,
02:04:31 21 then you'll need to decide whether or not that infringement
02:04:36 22 has been willful.

02:04:37 23 You'll also need to decide what amount of money
02:04:41 24 damages, if any, should be awarded to the Plaintiff as
02:04:44 25 compensation for that infringement.

02:04:47 1 Now, my job in this case is to tell you what the
02:04:51 2 law is, to handle rulings on evidence and procedure, and to
02:04:54 3 oversee the trial as effectively and efficiently as
02:04:58 4 possible.

02:04:58 5 In determining the law, it's specifically my job
02:05:02 6 to determine the meaning of any of the claim language from
02:05:07 7 within the asserted patent that needs to be interpreted.
02:05:11 8 I've already determined the meanings of certain language
02:05:17 9 from the claims in the patent-in-suit, and you must accept
02:05:19 10 those meanings or definitions that I give you and use those
02:05:23 11 meanings or definitions when you decide whether any claim
02:05:27 12 of the patent-in-suit has or has not been infringed. And
02:05:33 13 you're going to be given a document in a few minutes that
02:05:35 14 will reflect those meanings or definitions that the Court
02:05:38 15 has already reached.

02:05:40 16 Now, for any claim term, language within the
02:05:45 17 asserted claims, for which I've not provided you with a
02:05:48 18 specific definition or construction, you should apply the
02:05:52 19 plain and ordinary meaning. But if I have provided you
02:05:56 20 with a definition, sometimes called a construction, you're
02:05:59 21 to apply my definition and that meaning to those terms
02:06:03 22 throughout the case.

02:06:04 23 However, my interpretation of the language of the
02:06:09 24 asserted claims should not be taken by you as an indication
02:06:13 25 that I have any opinion regarding the issue of

02:06:17 1 infringement. That issue, ladies and gentlemen, is yours
02:06:19 2 alone to decide.

02:06:21 3 And I'll provide you with more detailed
02:06:24 4 instructions on the meaning of the claims before you retire
02:06:27 5 to deliberate and reach your verdict.

02:06:29 6 In deciding the issues that are before you, you'll
02:06:32 7 be asked to consider specific legal rules, and I'll give
02:06:36 8 you an overview of those rules now, and then at the
02:06:39 9 conclusion of the case, I'll give you more detailed
02:06:42 10 instructions.

02:06:42 11 The first issue that you're asked to decide is
02:06:46 12 whether the Defendant, Apple, has infringed any of the
02:06:51 13 asserted claims of the '091 patent.

02:06:54 14 Infringement is assessed on a claim-by-claim
02:06:57 15 basis. And PMC, the Plaintiff, must show by a
02:07:02 16 preponderance of the evidence that a claim has been
02:07:06 17 infringed. Therefore, there may be infringement as to one
02:07:10 18 claim but no infringement as to another claim.

02:07:13 19 There are also a few different ways that a patent
02:07:16 20 can be infringed. I'll explain the requirements for each
02:07:19 21 of these types of infringement to you in detail at the
02:07:23 22 conclusion of the case.

02:07:24 23 But, in general, a Defendant may infringe the
02:07:29 24 asserted patent by making, using, selling, or offering for
02:07:33 25 sale in the United States or importing into the United

02:07:38 1 States a product meeting all the requirements of a claim of
02:07:43 2 the asserted patent and without the patent owner's
02:07:44 3 permission.

02:07:45 4 As I say, I'll provide you with more detailed
02:07:51 5 instructions on the requirements for infringement at the
02:07:54 6 conclusion of the case.

02:07:54 7 If you decide that any claim of the patent-in-suit
02:07:58 8 has been infringed, you'll then need to decide whether the
02:08:03 9 Defendant's infringement has been willful.

02:08:05 10 You'll need also to decide what amount of money
02:08:10 11 damages should be awarded to the Plaintiff, PMC, to
02:08:14 12 compensate it for that infringement.

02:08:15 13 A damage award in a patent case like this must be
02:08:19 14 adequate to compensate the patentholder for the
02:08:23 15 infringement, and in no event may a damage award be less
02:08:28 16 than what the patentholder would have received if it had
02:08:30 17 been willing -- if it had been paid, rather, a reasonable
02:08:34 18 royalty for the use of its patent.

02:08:37 19 However, ladies and gentlemen, the damages you
02:08:39 20 award, if any, are meant to compensate the patentholder.
02:08:43 21 They are not meant to punish the Defendant. And you may
02:08:47 22 not include in any damages award an additional amount as a
02:08:51 23 fine or a penalty above what's necessary to fully
02:08:56 24 compensate the patentholder for the infringement.

02:08:59 25 Additionally, damages cannot be speculative, and

02:09:03 1 PMC, the Plaintiff, has the burden to prove the amounts of
02:09:07 2 its damages by a preponderance of the evidence.

02:09:11 3 I'll give you more detailed instructions on the
02:09:15 4 calculation of damages for the Defendant's alleged
02:09:20 5 infringement of the patent-in-suit at the conclusion of the
02:09:22 6 trial, including by giving you specific instructions with
02:09:26 7 regard to the calculation of a reasonable royalty.

02:09:30 8 However, the fact that I'm instructing you on
02:09:34 9 damages now does not mean that PMC is or is not entitled to
02:09:38 10 recover damages.

02:09:40 11 Now, ladies and gentlemen, you're going to be
02:09:43 12 hearing over the course of this trial from a number of
02:09:46 13 witnesses, and I want you to keep an open mind while you're
02:09:49 14 listening to the evidence and not decide any of the facts
02:09:53 15 until you've heard all of the evidence.

02:09:55 16 This is important. While the witnesses are
02:09:59 17 testifying, remember, you, the members of the jury, will
02:10:05 18 have to decide and determine the degree of credibility and
02:10:09 19 believability to allocate to the witnesses and the evidence
02:10:14 20 that's presented.

02:10:15 21 So while the witnesses are testifying, you should
02:10:18 22 be asking yourselves things like this: Does the witness
02:10:22 23 impress you as being truthful? Does he or she have a
02:10:25 24 reason not to tell the truth? Does he or she have a
02:10:29 25 personal interest in the outcome of the case? Does the

02:10:32 1 witness seem to have a good memory? Did he or she have an
02:10:37 2 opportunity and ability to observe accurately the things
02:10:41 3 that they've testified about? And did the witness appear
02:10:44 4 to understand the questions clearly and answer them
02:10:46 5 directly? And, of course, does the witness's testimony
02:10:51 6 differ from the testimony of other witnesses? And if it
02:10:55 7 does, how does it differ?

02:10:57 8 These are some of the things you should keep in
02:11:00 9 mind and be thinking about while you're listening to each
02:11:02 10 and every witness throughout the trial.

02:11:05 11 I also want to talk to you briefly about expert
02:11:10 12 witnesses.

02:11:11 13 When knowledge of a technical subject may be
02:11:14 14 helpful to you, the jury, a person who has special training
02:11:19 15 and experience in that particular technical field, we call
02:11:22 16 them an expert witness, is permitted to testify to you
02:11:26 17 about his or her opinions on technical matters.

02:11:30 18 However, ladies and gentlemen, you're not required
02:11:34 19 to accept an expert witness's or any witness's, for that
02:11:41 20 matter, opinions at all. It's up to you to decide whether
02:11:43 21 you believe an expert witness or any witness, for that
02:11:46 22 matter, and whether you believe what they tell you is
02:11:49 23 correct or incorrect and whether or not you want to believe
02:11:52 24 what they say.

02:11:53 25 That decision is solely yours as members of this

02:11:57 1 jury.

02:11:57 2 Now, I anticipate that there will be expert
02:12:00 3 witnesses testifying in support of each of the sides of
02:12:05 4 this case. But when an expert witness is called to the
02:12:08 5 witness stand and you listen to their qualifications, you
02:12:13 6 hear their testimony, and in that testimony they give you
02:12:15 7 an opinion and they explain the basis for that opinion, you
02:12:18 8 will have to evaluate what they say, whether you believe
02:12:22 9 it, and to what degree, if any, that you want to give that
02:12:25 10 opinion weight.

02:12:26 11 Remember, ladies and gentlemen, judging and
02:12:30 12 evaluating the credibility and the believability of each
02:12:34 13 and every witness is an important part of your job as
02:12:38 14 jurors.

02:12:38 15 Now, during the trial, it's possible that there
02:12:43 16 will be testimony presented from one or more witnesses that
02:12:47 17 will be presented to you through what's called a
02:12:49 18 deposition.

02:12:50 19 In trials like this, it's very difficult to get
02:12:54 20 every witness here in person at the same time. So before
02:12:58 21 the trial begins, the lawyers for both sides take the
02:13:02 22 depositions of each of the witnesses.

02:13:05 23 In a deposition, the witness is present, they are
02:13:09 24 sworn and placed under oath, just like they were in court
02:13:12 25 today. A court reporter is present. Every question that's

02:13:16 1 asked of them and every answer that they give is taken down
02:13:20 2 and transcribed accurately. And during the course of this
02:13:25 3 trial, if they are not able to be present, then portions of
02:13:29 4 those questions and answers presented in that deposition
02:13:33 5 can be played back or presented to you, the jury, as
02:13:37 6 testimony from that witness by way of a deposition.

02:13:40 7 Now, it's important for you to understand, ladies
02:13:45 8 and gentlemen, depositions usually go on for hours and
02:13:47 9 hours. And you're not going to be required when a witness
02:13:52 10 is presented to you by deposition to listen to hours and
02:13:56 11 hours of their testimony.

02:13:57 12 In that case, where the witness can't be here in
02:14:03 13 person and their testimony is presented through a
02:14:05 14 deposition, both the Plaintiff and the Defendant will
02:14:06 15 select portions of that testimony given over those hours
02:14:12 16 and hours that they think is particularly relevant, and
02:14:14 17 then those portions will be spliced together and played to
02:14:18 18 you as a deposition witness or as deposition witness
02:14:23 19 testimony.

02:14:23 20 That means if, in listening to a video where a
02:14:28 21 witness is shown to you and they are testifying, if it
02:14:31 22 looks like there is a break or a splice, that's probably
02:14:34 23 because there is a break or a splice, and these
02:14:37 24 designations from both Plaintiff and the
02:14:41 25 counter-designations from Defendants and vice versa are put

02:14:44 1 together, and all those hours of other things you don't
02:14:47 2 need to hear are cut out.

02:14:49 3 And if you hear a voice asking questions that
02:14:52 4 later in the deposition sounds like a very different voice,
02:14:55 5 it's because it is a very different person. And you're not
02:14:58 6 being required to listen to everything that went on for
02:15:00 7 hours and hours, just the relevant portions as the
02:15:04 8 Plaintiff chooses and as the Defendant chooses and as the
02:15:08 9 Court approves are played to you from these deposition
02:15:11 10 witnesses.

02:15:12 11 So if you see something that looks like a
02:15:14 12 connection, if you hear a change in voice, don't let that
02:15:17 13 bother you. That's just part of presenting the relevant
02:15:20 14 and the important parts to you where the witness can't be
02:15:23 15 here to testify live from the witness stand and a
02:15:26 16 deposition is used. And it saves you all those hours of
02:15:29 17 other questions and answers you don't need to hear or
02:15:33 18 listen to. So keep that in mind.

02:15:35 19 But deposition testimony is entitled to the same
02:15:41 20 consideration and, insofar as possible, is to be judged by
02:15:44 21 you, the jury, as to credibility, weight, and otherwise
02:15:47 22 considered in the same way as if the witness had been
02:15:52 23 present in open court and given their testimony under oath
02:15:55 24 from the witness stand.

02:15:56 25 Also, ladies and gentlemen, during the course of

02:16:01 1 the trial, it's possible that the lawyers will make certain
02:16:03 2 objections. When they do, I will give rulings on those
02:16:07 3 objections. It's the duty of an attorney to object in a
02:16:11 4 case when they believe the other side is trying to offer
02:16:13 5 testimony that is not proper under the rules of the Court
02:16:18 6 or the Rules of Evidence.

02:16:18 7 And upon the Court allowing the testimony or other
02:16:24 8 evidence to be introduced over the objection of an
02:16:27 9 attorney, the Court does not, unless expressly stated,
02:16:31 10 indicate any opinion as to the weight or effect of that
02:16:34 11 testimony.

02:16:35 12 As I've said before, you, the members of the jury,
02:16:40 13 are the sole judges of the credibility and believability of
02:16:43 14 all the witnesses, and you are the sole judges of the
02:16:47 15 proper amount of weight and effect to give to all of the
02:16:50 16 evidence.

02:16:50 17 Now, I'd like to compliment the lawyers on both
02:16:55 18 sides of this case because prior to today, through many
02:17:00 19 hours of pre-trial hearings, they have worked with the
02:17:02 20 Court to go through and prepare for this trial a list of
02:17:07 21 exhibits that you will see over the course of the trial.

02:17:10 22 And through these pre-trial procedures, they have
02:17:14 23 had the opportunity to make objections and the objections
02:17:17 24 have been responded to and the Court has heard and
02:17:21 25 considered both the motion and the opposition, the --

02:17:26 1 we've -- I've considered the exhibit and any objections to
02:17:29 2 it, I've applied the Rules of Evidence and considered it
02:17:32 3 from the viewpoint of proper admissibility in this trial,
02:17:36 4 and I've ruled on all those.

02:17:38 5 So you will not have to listen to all that when
02:17:41 6 it -- those documents are presented as exhibits in the
02:17:44 7 case. The Court has already pre-determined the documents
02:17:48 8 that are admissible as exhibits and has excluded the
02:17:52 9 documents the Court has found not to be admissible in
02:17:55 10 evidence.

02:17:56 11 And all of that has taken many hours that you were
02:17:59 12 not privileged to sit through and watch and you're not
02:18:04 13 going to have to see that as part of the trial. We've done
02:18:08 14 that for you and we've done that in advance. And I want to
02:18:12 15 compliment the lawyers on both sides for have worked
02:18:15 16 diligently with the Court in accomplishing that. And
02:18:16 17 whether you understand it or not, that saved you many hours
02:18:18 18 sitting in those chairs as a part of this trial.

02:18:21 19 So when an attorney in the case shows you an
02:18:24 20 exhibit that's been pre-admitted by the Court, they don't
02:18:27 21 have to offer it and draw an objection and hear arguments
02:18:30 22 on it and let the Court consider it and rule on it. All
02:18:35 23 that's been already done. And they can present it to you
02:18:37 24 without any formal predicate, and they can put it in a
02:18:40 25 proper context for you to consider. And that has saved you

02:18:44 1 a considerable amount of time, I promise you.

02:18:50 2 Now, even though that's been done, it's still
02:18:53 3 possible that during the course of the trial objections are
02:18:55 4 going to arise. If I should -- if I should sustain an
02:18:58 5 objection to a question addressed to a witness, then you
02:19:03 6 must disregard the question entirely, and you may draw no
02:19:07 7 inference about its wording or speculate about what the
02:19:10 8 witness would have said if I had allowed them to answer the
02:19:13 9 question.

02:19:13 10 On the other hand, however, if I overrule an
02:19:18 11 objection to a question addressed to a witness, then you
02:19:21 12 should consider the question and the answer just as if no
02:19:25 13 objection had been made in the first place.

02:19:27 14 You should know, ladies and gentlemen, that the
02:19:31 15 law of the United States permits a United States District
02:19:36 16 Judge -- it allows a United States District Judge to
02:19:41 17 comment to the jury regarding evidence during a trial. But
02:19:44 18 those comments from the judge on the evidence to the jury
02:19:46 19 are simply expressions of the judge's own opinion, and the
02:19:49 20 jury is free to disregard those comments in their entirety.
02:19:54 21 Because as I've told you, you, the jury, are the sole
02:19:57 22 judges of the facts in this case, and you are the sole
02:20:00 23 judges of the credibility and believability of the
02:20:04 24 witnesses and how much weight you want to give to all the
02:20:07 25 evidence produced in this trial.

02:20:08 1 And even though the law permits me as a United
02:20:13 2 States District Judge to comment to you on the evidence in
02:20:16 3 this case, I'm going to try very hard not to do that.

02:20:21 4 Also, ladies and gentlemen, our court reporter
02:20:26 5 seated in front of me, Ms. Holmes, is taking down
02:20:30 6 everything that's said over the course of the trial. She
02:20:32 7 took down everything that was said during jury selection
02:20:34 8 this morning. That's why I will do my best to make sure no
02:20:38 9 two people talk at the same time so that she can accurately
02:20:42 10 take down what is said.

02:20:43 11 But the written transcript of everything that's
02:20:46 12 said is not going to be available to you to consider during
02:20:50 13 your deliberations when you consider the verdict and the
02:20:54 14 questions therein after you've heard all the evidence.
02:20:57 15 That means, ladies and gentlemen, that you're going to have
02:21:02 16 to rely on your memories of the evidence and the testimony
02:21:05 17 that's presented over the course of this trial.

02:21:07 18 Now, in a moment, you're each going to receive a
02:21:11 19 juror notebook. In these notebooks, you will find a legal
02:21:14 20 pad in the back that you can take notes on throughout the
02:21:16 21 trial if you choose to do that. It's up to you each of you
02:21:21 22 to decide whether or not you want to take notes during the
02:21:24 23 course of the trial, and if you do, how detailed do you
02:21:27 24 want those notes to be.

02:21:31 25 But you should remember that notes taken during

02:21:35 1 the trial are for your own personal use, and you still have
02:21:38 2 to rely on your memory of the evidence, and that's why you
02:21:40 3 should pay very close attention to the testimony of each
02:21:42 4 and every witness.

02:21:43 5 Also, you should not abandon your own recollection
02:21:50 6 about the evidence in this case because some other juror's
02:21:54 7 notes indicate something differently. Your notes, if you
02:21:57 8 take them, are to refresh your recollection, and that's the
02:22:00 9 only reason that you should be keeping them, if you choose
02:22:04 10 to keep them.

02:22:05 11 I'm now going to ask our Court Security Officer to
02:22:10 12 pass out these juror notebooks to each member of the jury.

02:22:39 13 In these notebooks, ladies and gentlemen, you'll
02:23:47 14 see that you each have in each notebook a complete copy of
02:23:52 15 the '091 patent, the patent-in-suit. You'll also find in
02:23:58 16 these notebooks a chart containing portions of the claim
02:24:03 17 language of the asserted claims that the Court has
02:24:06 18 previously construed or defined, and you'll find the
02:24:09 19 definitions that the Court has provided directly across the
02:24:13 20 page from that claim language that I have construed.

02:24:15 21 And as I've said, you are to apply my definitions
02:24:19 22 and meanings for that language throughout the trial.

02:24:22 23 You're also going to find a section of witness
02:24:27 24 pages in the notebooks. They should be tabbed and
02:24:32 25 available for you to flip through quickly so that each

02:24:34 1 person that testifies should have a page with their picture
02:24:37 2 on it and their name on it and then some blank lines for
02:24:41 3 you to take additional notes on if you wish.

02:24:43 4 I found that jurors benefit, especially in a trial
02:24:48 5 like this, from being able to go back and see a picture of
02:24:51 6 the persons that testified during the trial and to make
02:24:55 7 sure they connect the right memories with the testimony
02:24:59 8 that was given by those particular witnesses. So we supply
02:25:02 9 those witness pages for you.

02:25:03 10 And you'll also find, as I mentioned, a legal pad
02:25:07 11 in the back of those notebooks for additional note-taking.
02:25:12 12 And there's supposed to be a ballpoint pen in the front
02:25:15 13 flap. I noticed a few of them got loose as they were being
02:25:19 14 passed out. If you don't find a ballpoint pen or you don't
02:25:23 15 have a pen, we'll take -- we'll make sure that you get one.
02:25:26 16 If anybody doesn't have a pen or doesn't find one in their
02:25:29 17 notebooks, raise your hand, and I'll make sure you get a
02:25:32 18 pen.

02:25:33 19 Okay. I think everybody has a pen then.

02:25:36 20 Are we missing one? Do we have one of those pens
02:25:40 21 that dropped out? Let's take the one -- yes, and pass it
02:25:47 22 down to -- pass it down to Juror No. 2 if you don't mind.

02:25:58 23 You got one?

02:25:59 24 All right. Anybody else not have a pen. All
02:26:02 25 right. I assume everybody does, good.

02:26:05 1 Ladies and gentlemen, you should keep these
02:26:08 2 notebooks in your possession throughout the trial. At the
02:26:10 3 end of the day, you should leave them on the table closed
02:26:12 4 in the jury room, and they should be there in the morning
02:26:15 5 when you come back. And when you're in the courtroom, you
02:26:17 6 should have them in your possession just like you have them
02:26:20 7 now.

02:26:21 8 Now, there will be times during the trial that
02:26:24 9 we'll take a short recess, and you're not going to be out
02:26:27 10 of the jury box very long. And in those cases, I will
02:26:31 11 probably say something like, ladies and gentlemen, you may
02:26:33 12 simply close your notebooks and leave them in your chairs.
02:26:37 13 If you're not to be gone very long, I'll probably just
02:26:42 14 instruct you to leave them in your chairs and there'll be
02:26:45 15 there when you come back.

02:26:47 16 But unless I give you instructions like that, they
02:26:50 17 should be in your possession at all times. They should not
02:26:53 18 be left lying around where anybody but members of the jury
02:26:56 19 could have access to them or see them. So keep them in
02:26:59 20 your possession. And unless I give you instructions, don't
02:27:03 21 leave the courtroom without taking them to the jury room
02:27:05 22 with you.

02:27:05 23 Now, in a minute, we're going to hear opening
02:27:15 24 statements from the lawyers for both the Plaintiff and the
02:27:16 25 Defendant. And these opening statements, as I mentioned,

02:27:19 1 are intended to give you a roadmap about what each side
02:27:22 2 expects that the evidence is going to show you.

02:27:24 3 And you should remember, ladies and gentlemen,
02:27:27 4 throughout this trial, now and throughout the very end of
02:27:31 5 it, what the lawyers tell you is not evidence. I'll say
02:27:36 6 that again, what the lawyers tell you is not evidence. The
02:27:39 7 evidence is the sworn testimony of the witnesses presented
02:27:43 8 from the witness stand under oath and subject to
02:27:47 9 cross-examination, whether they're presented live or by
02:27:52 10 deposition, as I've already explained to you.

02:27:53 11 Also, the evidence in this case are those
02:27:56 12 documents and other things that the Court has already
02:27:59 13 considered and determined are properly admissible and --
02:28:04 14 excuse me -- and that come into the trial as exhibits.

02:28:08 15 Now, what the lawyers tell you is simply their
02:28:12 16 impression of what the evidence is, and they have a duty to
02:28:16 17 try and point out to you what they believe the evidence
02:28:18 18 shows but, remember, what they tell you is not evidence.

02:28:26 19 Now, as I mentioned during jury selection and
02:28:28 20 before you recessed for lunch, after the opening
02:28:30 21 statements, the Plaintiff will put on its case-in-chief and
02:28:34 22 call its witnesses. And when the Plaintiff has called all
02:28:37 23 its witnesses in its case-in-chief, the Plaintiff will rest
02:28:41 24 its case-in-chief.

02:28:43 25 Then the Defendant will proceed to put on its

02:28:46 1 case-in-chief and call its witnesses. And when those
02:28:49 2 witnesses have testified, then the Defendant will rest the
02:28:52 3 Defendant's case-in-chief.

02:28:53 4 When the Defendant rests, the Plaintiff will have
02:29:00 5 an opportunity, if it chooses, to call rebuttal witnesses.
02:29:03 6 If it doesn't, then that will be a conclusion -- that will
02:29:07 7 be the conclusion of the evidence. If the Plaintiff does
02:29:09 8 call rebuttal witnesses, then when those rebuttal witnesses
02:29:12 9 have testified and are complete, then you will have heard
02:29:15 10 all the evidence in this case.

02:29:16 11 And at that point, I will give you my final
02:29:19 12 instructions on the law that you are to apply. And when I
02:29:22 13 give you those instructions after you've heard all the
02:29:25 14 evidence, ladies and gentlemen, I'm going to give them to
02:29:27 15 you verbally on the record in open court, but I'm also
02:29:31 16 going to have those instructions reduced to writing, and
02:29:36 17 you're each going to have your own individual copy of those
02:29:40 18 instructions in writing to take with you to the jury room
02:29:43 19 so that you can refer back to my instructions that I've
02:29:45 20 given you, both orally in the courtroom and that you'll
02:29:48 21 have in writing in your own possession when you retire to
02:29:51 22 the jury room.

02:29:52 23 Those final instructions from the Court to the
02:29:57 24 jury are called the Court's final instructions on the law.
02:30:00 25 They are sometimes called the Court's charge to the jury.

02:30:03 1 And when I've presented my charge to you, the
02:30:08 2 jury, after that, the lawyers will present their closing
02:30:10 3 arguments. And after the lawyers for both sides have
02:30:13 4 presented their closing arguments, then I'll instruct you
02:30:17 5 to retire to the jury room and to deliberate on the
02:30:21 6 evidence and to answer the questions in the verdict form
02:30:25 7 and return a verdict in this case.

02:30:27 8 Let me repeat my earlier instruction to you.
02:30:31 9 You're not to discuss this case among yourselves throughout
02:30:34 10 this trial until I tell you that, after all the evidence is
02:30:39 11 in, you may retire to the jury room and deliberate on your
02:30:43 12 verdict.

02:30:44 13 At that point, the switch goes 180 degrees, and
02:30:47 14 you go from not being able to discuss the evidence among
02:30:50 15 yourselves to being where you must discuss the evidence
02:30:53 16 among yourselves to reach a unanimous decision about the
02:30:58 17 various questions included in the verdict form.

02:31:00 18 Let me also remind you, as I did before lunch,
02:31:05 19 throughout this trial, you see the courtroom is nearly full
02:31:08 20 of people. There are almost all here -- there may be one
02:31:13 21 or two bystanders, but almost everyone in the gallery is
02:31:17 22 associated with one side of this case or the other. None
02:31:19 23 of these people are going to speak to you over the course
02:31:22 24 of the next week. If you pass them on the sidewalk or in
02:31:25 25 the parking lot, they're going to walk right by you. And

02:31:29 1 when they do that, don't think they're being rude. Don't
02:31:32 2 hold it against them. Don't be offended by it. They're
02:31:35 3 simply doing what the Court has instructed everybody
02:31:39 4 associated with each side of this case to do, and that is
02:31:41 5 to not communicate with the jury in any way.

02:31:43 6 All right. Ladies and gentlemen, with those
02:31:45 7 instructions, we're now going to proceed to hear the
02:31:48 8 opening statements from both the Plaintiff and then from
02:31:49 9 the Defendant.

02:31:50 10 Plaintiff, you may now present your opening
02:31:52 11 statement to the jury.

02:31:54 12 MR. KLINE: Thank you, Your Honor.

02:31:58 13 THE COURT: Would you like a warning on your time?

02:32:01 14 MR. KLINE: I would, please. Thank you, Your
02:32:11 15 Honor.

02:32:11 16 THE COURT: And what kind of warning would you
02:32:13 17 like, at what point?

02:32:14 18 MR. KLINE: Five minutes would be good, Your
02:32:17 19 Honor. Thank you very much.

02:32:17 20 THE COURT: All right. Please proceed when you're
02:32:19 21 ready, counsel.

02:32:19 22 MR. KLINE: Good afternoon. My name is Doug
02:32:40 23 Kline, and I'm very proud to stand before you on behalf of
02:32:42 24 my client, PMC.

02:32:44 25 I also stand before you on behalf of all the

02:32:48 1 people who have devoted many years of their time, energy,
02:32:51 2 and ideas to making PMC the great company that it is today.

02:32:55 3 Many of these folks are here with us, and over the
02:32:59 4 course of this trial, you'll get a chance to hear from some
02:33:02 5 of them directly.

02:33:03 6 Thank you for taking the time to help us resolve
02:33:05 7 this very important dispute between PMC and Apple.

02:33:09 8 You were also generous to share a bit about
02:33:14 9 yourselves with us earlier. And so in fairness, let me
02:33:18 10 tell you just a little bit about me. I live in a small
02:33:20 11 town north of Boston. I've lived there my whole life. My
02:33:24 12 wife and I met in middle school, and we're coming being up
02:33:27 13 on 35 years of being married. We have three grown
02:33:30 14 children, and now we have two grandchildren. My wife is a
02:33:34 15 hospice visitor. With me are my colleagues, several of
02:33:38 16 whom you'll get to meet.

02:33:39 17 On their feet, you'll hear from my partner, Ms.
02:33:46 18 Alexandra Valenti, my partner, Mr. Tony Downs, and my
02:33:50 19 partner, Mr. Robert Frederickson.

02:33:52 20 Also with us at counsel table is PMC's senior vice
02:33:58 21 president and general counsel, Mr. Tom Scott.

02:34:00 22 Now, as you heard from His Honor, at the end of
02:34:06 23 this trial you'll be asked to decide whether Apple has
02:34:09 24 infringed PMC's United States patent that we call the '091
02:34:12 25 patent. This is what we call the ribbon copy of the

02:34:18 1 patent. It was published by the United States Patent and
02:34:20 2 Trademark Office on May 29th of 2012. And if you find
02:34:23 3 infringement, you'll be asked to decide the amount of
02:34:26 4 damages that Apple should pay for that infringement.

02:34:29 5 To help you begin to understand the issues in this
02:34:36 6 case, I'd like to talk with you this morning about four
02:34:39 7 things.

02:34:39 8 First, I'll give you a brief overview of what this
02:34:43 9 case is about and, in particular, about some of the legal
02:34:45 10 and technical issues that will be presented to you.

02:34:50 11 Next, I'll tell you a little more about PMC, its
02:34:54 12 founder and inventor, Mr. John Harvey, and the patent
02:34:57 13 that's at issue in this case.

02:35:01 14 After that, I'll talk generally about how Apple's
02:35:04 15 FairPlay technology works and some of the evidence you'll
02:35:06 16 hear describing FairPlay.

02:35:09 17 And then, finally, during this opening statement,
02:35:12 18 I'll tell you a little bit about the long history between
02:35:16 19 PMC and Apple, how we ended up here, and what PMC is asking
02:35:19 20 from you.

02:35:19 21 Ladies and gentlemen, this case is about doing the
02:35:25 22 right thing. As you've heard, my client, PMC, owns the
02:35:33 23 patent that you'll hear a lot about during the course of
02:35:35 24 this trial.

02:35:36 25 Patents are property rights, and no one, not even

02:35:41 1 Apple Incorporated, is allowed to make, use, or sell a
02:35:45 2 patented invention without paying for it. That's why we're
02:35:47 3 here. Apple is using PMC's patented technology and we're
02:35:55 4 here asking you to hold them accountable.

02:35:57 5 Now, as I think you saw during the video this
02:35:59 6 morning and His Honor discussed, a patent is much like a
02:36:02 7 deed to a piece of real estate. A landowner has the right
02:36:10 8 to use the land, perhaps by building a house on it. A
02:36:13 9 landowner can keep other people off of his land by building
02:36:18 10 a fence around it. Now, imagine that landowner has oil on
02:36:21 11 his land and owns the mineral rights, the landowner can
02:36:26 12 grant the license to an oil company to come on to his land
02:36:30 13 and pump that oil. The landowner and the oil company may
02:36:33 14 agree to a royalty that the oil company will pay for each
02:36:39 15 barrel of oil pumped from the land.

02:36:41 16 Patents work much the same way. Just like a deed
02:36:45 17 sets out the metes and bounds of a piece of proper, patent
02:36:48 18 claims set the boundaries of what the patentholder owns.
02:36:52 19 The owner of a patent has the right to exclude others from
02:36:54 20 making, using, offering for sale, or selling the invention.
02:37:00 21 This is a right conferred by our Constitution of the United
02:37:04 22 States, it allows Congress to grant to inventors the
02:37:10 23 exclusive rights to their discoveries.

02:37:11 24 Now, I imagine that some of you may have
02:37:14 25 downloaded music, movies, TV shows, books, and apps on to

02:37:18 1 your phone or your computer. The technology in this case
02:37:20 2 was invented by a team led by PMC's founder, Mr. Harvey,
02:37:26 3 and it's critical to protecting downloaded programming
02:37:30 4 against piracy and getting it into a format on your phone
02:37:34 5 or computer that let's you use it, say run the app, listen
02:37:37 6 to the music, watch the movie or the TV show.

02:37:41 7 Mr. Harvey is with us here today.

02:37:45 8 And if you could just please stand up for a
02:37:46 9 moment, Mr. Harvey, so the jury can see you. Thank you.

02:37:49 10 You will learn over the next few days about
02:37:52 11 Mr. Harvey about the inventions that he made and patented.
02:37:55 12 You'll learn what an incredible visionary Mr. Harvey is.
02:38:00 13 His pioneering inventions have turned out to be even
02:38:02 14 farther ahead of their time than anybody could have
02:38:06 15 predicted. Many of today's technologies still rely upon
02:38:10 16 foundational building blocks that Mr. Harvey invented. One
02:38:15 17 of those building blocks is the invention covered by PMC's
02:38:21 18 '091 patent. You'll hear it referred to as the '091
02:38:23 19 patent. As a shorthand, I will refer to Mr. Harvey's
02:38:29 20 invention as his key management invention.

02:38:33 21 The patent covers foundational technology for
02:38:38 22 decrypting programming that has been encrypted.

02:38:41 23 Apple encrypts the programming that it sells
02:38:45 24 through its iTunes Store to protect it against piracy. To
02:38:50 25 use the programming, listen to the music, watch the movie,

02:38:55 1 you have to decrypt it.

02:38:57 2 Now, you can think about encryption like a lock.

02:39:00 3 Information can be encrypted or locked so that it's

02:39:03 4 unusable.

02:39:05 5 In the case of video, that means you can't watch

02:39:07 6 it.

02:39:10 7 The encrypted information can be decrypted, you
02:39:13 8 might say unlocked, with a decryption key. Think about a

02:39:19 9 decryption key like a key or combination that opens the

02:39:23 10 lock. With the right key, decryption unlocks encrypted

02:39:30 11 information to make it useable. In the case of video, for

02:39:33 12 example, that means you can watch it.

02:39:35 13 Mr. Harvey's key management invention provides a

02:39:39 14 very secure and efficient solution for decrypting encrypted

02:39:42 15 information. It protects against piracy without making

02:39:46 16 authorized use of the information clumsy or complicated to

02:39:50 17 the user.

02:39:50 18 The evidence that you will see and hear this week

02:39:52 19 will show that Apple uses Mr. Harvey's patented key

02:39:56 20 management invention to protect the programming that Apple

02:40:00 21 sells through its iTunes Stores, protect it against piracy

02:40:04 22 so that people can't steal or copy it.

02:40:07 23 Now, you'll hear Apple's witnesses testify about

02:40:11 24 how important it was to Apple to be able to offer all of

02:40:15 25 this content, movies, TV shows, music, other programming,

02:40:19 1 through its iTunes Stores.

02:40:21 2 Apple wanted this program to distinguish its
02:40:24 3 iPhone from Apple's competitors. But Apple had a problem.
02:40:28 4 It doesn't own most of the content that it sells and rents
02:40:32 5 through iTunes. Apple had to convince content creators and
02:40:37 6 owners to let Apple sell and rent their content through
02:40:41 7 iTunes. The content providers agree, but only after Apple
02:40:46 8 promised to provide strong anti-piracy protection.

02:40:51 9 Think about it: You might spend five years of
02:40:54 10 your life to write a book, millions of dollars to make a
02:40:58 11 super hero movie. One copy of the book, one DVD of the
02:41:03 12 movie stolen from a Walmart shelf, that would be
02:41:06 13 disappointing. But a pirated copy of the book, illegally
02:41:12 14 downloaded, copied millions of times, distributed around
02:41:16 15 the world instantly over the Internet, that's a disaster.

02:41:19 16 Mr. Harvey's key management invention helps to
02:41:25 17 prevent this.

02:41:25 18 Apple promised music companies, movie studios,
19 book publishers, it would protect their programming against
02:41:33 20 piracy with technology that, as we've heard, Apple calls
02:41:35 21 FairPlay. The promise worked. Companies agreed to let
02:41:41 22 Apple sell their programming through iTunes. iTunes took
02:41:46 23 off, and so did the sale of iPhones and Mac computers. In
02:41:51 24 fact, since PMC's '091 patent issued in 2012, Apple has
02:41:55 25 used FairPlay to deliver more than 70 billion downloads to

02:42:00 1 its customers.

02:42:02 2 That number is growing by millions every single
02:42:05 3 day. The evidence that you will see and hear this week
02:42:09 4 will show that FairPlay uses Mr. Harvey's patented key
02:42:13 5 management invention to protect those downloads.

02:42:15 6 Now, let me pause and set one thing straight right
02:42:23 7 off the bat.

02:42:24 8 Neither PMC nor Mr. Harvey is going to claim at
02:42:29 9 this trial, or has claimed anywhere else, that Mr. Harvey
02:42:32 10 invented the Internet or the iPhone or the iTunes Store.
02:42:36 11 PMC doesn't claim that Mr. Harvey invented everything that
02:42:39 12 FairPlay does. Don't get confused about that. But
02:42:44 13 Mr. Harvey did invent pioneering, foundational technology
02:42:48 14 for preventing piracy, including how to manage the keys
02:42:52 15 needed to unlock encrypted information.

02:42:58 16 FairPlay uses Mr. Harvey's '091 invention for key
02:43:03 17 management.

02:43:03 18 Again, a copy -- this is the cover sheet of PMC's
02:43:10 19 '091 patent. You can see it's entitled Signal Processing
02:43:14 20 Apparatus and Methods. The patent identifies PMC's
02:43:18 21 founder, Mr. Harvey, as its first named inventor. It also
02:43:23 22 names Mr. James Cuddihy as a co-inventor. You'll hear from
02:43:26 23 Mr. Harvey directly, so I'll leave it to him to tell you
02:43:32 24 about his friend and colleague, Mr. Cuddihy.

02:43:35 25 PMC filed the application for this patent on

02:43:37 1 June 7th of 1995. The United States Patent and Trademark
02:43:42 2 Office examined the application, determined that
02:43:44 3 Mr. Harvey's key management invention was new, and issued
02:43:46 4 the '091 patent on May 29th of 2012.

02:43:50 5 Now, you may notice that it did take some time for
02:43:54 6 the Patent Office to examine the '091 patent. Toward the
02:43:58 7 front of the patent -- toward the front of the patent in
02:44:02 8 your notebook, you can see that the '091 patent lists 33
02:44:06 9 pages of prior art, patents, articles, and other
02:44:10 10 information that the Patent Office considered before
02:44:13 11 granting the patent. Thousands of prior art references.

02:44:17 12 The Patent Office considered all of this material
02:44:21 13 in the course of its examination, and that takes time.

02:44:26 14 Now, I mentioned that it's the claims, and the
02:44:28 15 Court mentioned that it's the claims that defined the
02:44:32 16 boundaries of a patent. Claim 13 of PMC's '091 patent
02:44:38 17 describes a method of decrypting programming at a receiver
02:44:41 18 station.

02:44:42 19 Claim 13 appears towards the very end of the
02:44:45 20 patent at Column 285.

02:44:47 21 I'll talk more about what the claim describes in a
02:44:51 22 moment, but I would like to point out at least one thing
02:44:54 23 about the claim.

02:44:54 24 Notice, it describes decrypting programming at a
02:45:00 25 receiver station. It does not say how or when the

02:45:05 1 programming got to the receiver station or where the
02:45:09 2 programming came from. The claim simply describes a method
02:45:14 3 for decrypting encrypted programming at the receiver
02:45:19 4 station.

02:45:19 5 Now, the evidence that you will see and hear this
02:45:24 6 week will show that Apple has been infringing PMC's '091
02:45:29 7 patent for nine years by using Apple's FairPlay technology.

02:45:32 8 Apple refers to FairPlay as digital rights
02:45:38 9 management technology. You'll see documents and hear
02:45:41 10 witnesses refer to it as DRM technology. I have no doubt
02:45:46 11 Apple may tell you that digital rights management
02:45:49 12 technology is new and that PMC's patented key management
02:45:51 13 invention is old and, therefore, doesn't apply to DRM.
02:45:56 14 It's not the case.

02:45:57 15 The Patent Office agreed in 2012 that Mr. Harvey's
02:46:00 16 key management invention was new. Digital rights
02:46:03 17 management, DRM, it's just a name. It doesn't change the
02:46:06 18 fact that Apple's FairPlay DRM technology uses PMC's
02:46:11 19 foundational key management invention to make the
02:46:15 20 decryption of Apple's encrypted programming very secure and
02:46:19 21 very efficient on your phone.

02:46:21 22 Apple does this by managing the decryption keys
02:46:27 23 that its customers need to unlock Apple's encrypted
02:46:29 24 programming.

02:46:30 25 Claim 13 of PMC's '091 patent covers the technique

02:46:37 1 that Apple uses to instruct your phone how to locate and
02:46:43 2 how to unlock the decryption keys that it needs.

02:46:45 3 Apple has known about and has been using PMC's key
02:46:51 4 management technology for a long time, nine years. But
02:46:55 5 after many years of talking with PMC about licensing, Apple
02:46:59 6 has refused to pay PMC for permission to use PMC's
02:47:03 7 technology. That makes Apple an infringer.

02:47:07 8 Turning to Mr. Harvey, PMC, and the '091 patent.

02:47:12 9 Mr. Harvey, as I mentioned, he's the first named
02:47:17 10 inventor on the patent. He's the founder of the company.
02:47:20 11 He first became interested in communication networks as a
02:47:24 12 young boy. That's Mr. Harvey with his little brother in
02:47:26 13 the center, and Mr. Harvey on the sides. He attended
02:47:31 14 college in the 1960s on an ROTC scholarship.

02:47:36 15 After college he served in the Navy. He started
02:47:40 16 as a communications officer in the Naval School Command.
02:47:45 17 He served as a cryptography board member, an electronics
02:47:46 18 material officer, and an operations officer. During the
02:47:50 19 Vietnam War Mr. Harvey went to sea on a destroyer, the USS
02:47:58 20 Harry Hubbard. He later served on a cable laying ship, the
02:48:01 21 USS Aeolus. Mr. Harvey designed the Aeolus's radio
02:48:04 22 controller. He managed the equipment and the ship
02:48:06 23 personnel handling fleet broadcasts.

02:48:09 24 Mr. Harvey himself will tell you more about his
02:48:14 25 experience in the Navy and on the Aeolus, and how much he

02:48:17 1 enjoyed his opportunity to work with the most advanced
02:48:20 2 communication technology and engineers at the time. He'll
02:48:22 3 talk about how his naval experience shaped his thinking and
02:48:25 4 sowed the seeds that would eventually bottom PMC.

02:48:30 5 In 1973, Mr. Harvey met Ms. Mary Kazie Metzger.
02:48:37 6 Ms. Metzger is here with us today.

02:48:39 7 And if you don't mind, Ms. Metzger, can you please
02:48:42 8 stand so the jury can see you? Thank you.

02:48:45 9 Ms. Metzger will be our first witness. She joined
02:48:49 10 PMC in 1994. Today, she's the chief executive officer of
02:48:53 11 the company. Ms. Metzger is herself a pioneer in the cable
02:48:56 12 and satellite communications industry. She'll tell us
02:49:00 13 about her career in that industry, her decision to join
02:49:04 14 Mr. Harvey at PMC.

02:49:05 15 Ms. Metzger's experience and contacts was critical
02:49:10 16 to PMC's early effort to help find investors and partners
02:49:14 17 to commercialize the technology that Mr. Harvey invented,
02:49:17 18 to get it into the hands of consumers. Ms. Metzger's hard
02:49:20 19 work has been an important part of the hard-earned success
02:49:23 20 that PMC has been able to achieve over the years.

02:49:26 21 I should add, in addition to being PMC's chief
02:49:30 22 executive officer, Ms. Metzger is married to Mr. Harvey.
02:49:34 23 They were married in 1977, and they've been together ever
02:49:37 24 since, 44 years.

02:49:40 25 But for the moment, back to Mr. Harvey.

02:49:42 1 After he got out of the Navy, Mr. Harvey continued
02:49:47 2 to work in fields that gave him more exposure to
02:49:50 3 complicated computer systems and communication networks.
02:49:53 4 He began writing computer programs for automating complex
02:49:57 5 financial and accounting processes. But in 1980,
02:50:00 6 Mr. Harvey decided to stop working for other people, to
02:50:03 7 devote himself full time to his life's passion, inventing
02:50:07 8 new communication systems and technologies. He founded PMC
02:50:11 9 in 1981 and filed his first patent application the same
02:50:15 10 year.

02:50:16 11 That first patent application described inventions
02:50:19 12 that Mr. Harvey conceived relating to the coordination of
02:50:23 13 multi-media presentations, network automation, and many
02:50:27 14 other innovations.

02:50:28 15 PMC's first patent, the '490 patent, issued on
02:50:34 16 September 15th of 1987. But Mr. Harvey didn't stop there.
02:50:40 17 He spent the next six years building on his original ideas.
02:50:44 18 He filed a second patent application in 1987. That
02:50:48 19 application adds to the work that Mr. Harvey described in
02:50:51 20 his first application, and it describes additional
02:50:53 21 inventions that Mr. Harvey conceived after he had filed his
02:50:56 22 first application.

02:51:00 23 Mr. Harvey's 1987 application was nearly 550 pages
02:51:05 24 long. This is a copy of it.

02:51:06 25 It included 23 pages of technical drawings. As a

02:51:13 1 patent, in your book, it runs to over 275 columns.

02:51:19 2 The United States Patent Office has issued more
02:51:21 3 than 100 patents based on Mr. Harvey's original two patent
02:51:25 4 applications.

02:51:27 5 The '091 patent in this case is one of them.

02:51:30 6 PMC filed the application for the '091 patent to
02:51:34 7 cover Mr. Harvey's key management invention, as I
02:51:38 8 mentioned. It's what's called a continuation application
02:51:40 9 of Mr. Harvey's '87 application. The Patent Office
02:51:44 10 examined it, agreed that the invention was new, and issued
02:51:48 11 the patent, as I mentioned, on May 29th of 2012.

02:51:54 12 Now, I also expect that you'll hear from Apple
02:51:57 13 that it must -- how can it be infringing a patent that PMC
02:52:02 14 filed so long ago.

02:52:03 15 Apple ignores that the patent expressly describes
02:52:05 16 a system for, quote, decrypting programming and instruction
02:52:10 17 signals that are encrypted and for identifying those who
02:52:13 18 pirate programming and inhibiting piracy.

02:52:16 19 Apple ignores that 23 companies have taken
02:52:21 20 licenses to PMC's intellectual property, including the '091
02:52:25 21 patent. Those companies include Cisco in 2011, Motorola in
02:52:30 22 2011, Sony in 2012, Samsung in 2017, LG just two years ago,
02:52:38 23 2019. You can see many more on your screen.

02:52:40 24 Instead, Apple will cherry-pick parts of PMC's
02:52:47 25 patent that describes other inventions that Mr. Harvey

02:52:50 1 made, inventions relating to broadcast television, other
02:52:55 2 innovations, and say, that's not what we do.

02:52:58 3 But PMC is not accusing Apple of infringing all of
02:53:02 4 its patents. This case is about PMC's '091 patent and the
02:53:06 5 claims in that patent that describe Mr. Harvey and
02:53:09 6 Mr. Cuddihy's key management invention. PMC is accusing
02:53:12 7 Apple of infringing those claims.

02:53:14 8 So let me talk a little bit about Apple's FairPlay
02:53:19 9 technology. If you've downloaded a song, a movie, a TV
02:53:23 10 show or an app, you've probably used Apple's FairPlay
02:53:27 11 technology without even knowing it.

02:53:28 12 As you heard this morning from His Honor, PMC must
02:53:32 13 prove infringement by a preponderance of the evidence. You
02:53:35 14 also heard that to prove infringement, PMC must show that
02:53:39 15 each and every element of PMC's patent claims is present in
02:53:42 16 Apple's FairPlay system. We embrace that burden. And we
02:53:47 17 retained two experts analyze how FairPlay works.

02:53:50 18 Dr. Cory Plock is an adjunct professor of computer
02:53:55 19 science at New York University. He reviewed the computer
02:53:58 20 source code that Apple produced in this litigation and that
02:54:02 21 defines the operation of FairPlay. Dr. Plock will testify
02:54:05 22 by video.

02:54:05 23 He also studied technical documents that Apple
02:54:09 24 produced, sworn testimony that Apple's witnesses gave
02:54:13 25 describing the importance and operation of FairPlay.

02:54:15 1 Dr. Alf Weaver is professor emeritus of computer
02:54:24 2 science at the University of Virginia. Dr. Weaver is here
02:54:28 3 with us today.

02:54:28 4 He analyzed Apple's infringement. He reviewed
02:54:33 5 Dr. Plock's analysis, many Apple technical documents, the
02:54:37 6 sworn testimony of Apple's witnesses, and PMC's '091
02:54:41 7 patent. He will walk us through his element-by-element
02:54:45 8 analysis to show exactly how FairPlay meets each element of
02:54:51 9 the claims to explain his analysis and the conclusion that
02:54:54 10 he reached that Apple infringes PMC's patent.

02:54:57 11 Let me give you a general overview, though, of how
02:55:03 12 FairPlay works. Say you want to purchase the movie Toy
02:55:07 13 Story from the iTunes Store. You'd open the iTunes app on
02:55:10 14 your phone, search for, and select Toy Story and click buy.

02:55:18 15 Once you authorize payment, you are done.
02:55:21 16 FairPlay and iTunes take over. They work together to send
02:55:25 17 to your phone all the information you need to receive,
02:55:29 18 decrypt, and play Toy Story.

02:55:31 19 Now, the copy of Toy Story that you receive, it's
02:55:38 20 encrypted. Without FairPlay, you wouldn't able to do
02:55:41 21 anything with this copy. You need a content key to unlock
02:55:49 22 your encrypted copy of FairPlay. Apple also encrypts the
02:55:56 23 content key itself. So you need an account key to unlock
02:55:59 24 the content key. And your phone needs security information
02:56:04 25 to find the right account key.

02:56:07 1 FairPlay takes care of all of this. All you do is
02:56:11 2 click buy. FairPlay and iTunes do the rest.

02:56:15 3 Dr. Plock and Dr. Weaver will describe FairPlay in
02:56:20 4 much more detail. Their testimony and other evidence that
02:56:24 5 you will see and hear this week will show this is the
02:56:26 6 method of decrypting programming that Claim 13 of PMC's
02:56:33 7 '091 patent describes.

02:56:33 8 So, finally, let me talk about PMC and Apple's
02:56:37 9 history.

02:56:38 10 You'll hear testimony from PMC's former president,
02:56:44 11 Gerald Holtzman, about the long history of his discussions
02:56:46 12 with Apple and PMC's offers to grant to Apple permission to
02:56:49 13 use PMC's invention in exchange for a royalty.

02:56:55 14 Here's a photograph of Mr. Holtzman. I'm sorry to
02:56:59 15 tell you Mr. Holtzman passed away three years ago. We have
02:57:03 16 video, though, of a deposition that Mr. Holtzman gave in
02:57:05 17 this case, and we'll watch some of that video, I think,
02:57:09 18 later today.

02:57:09 19 You'll hear Mr. Holtzman describe that over a
02:57:12 20 period of about six years, PMC and Apple discussed PMC's
02:57:15 21 technology and its offers to license the technology to
02:57:19 22 Apple.

02:57:19 23 This is the timeline from 2008 until 2014 or so, a
02:57:25 24 period over which PMC and Apple discussed partnering
02:57:27 25 together concerning PMC's intellectual property.

02:57:31 1 The blue dots indicate some of the instances where
02:57:34 2 PMC reached out to Apple. The red dots indicate each time
02:57:39 3 Apple reached out to PMC often asking for more information.

02:57:41 4 THE COURT: Five minutes remaining.

02:57:43 5 MR. KLINE: Teams of people from PMC and Apple
02:57:46 6 even met in person on several occasions to discuss PMC's
02:57:49 7 technology.

02:57:49 8 But PMC eventually had to face the fact that Apple
02:57:55 9 was not going to agree to pay for permission to use PMC's
02:57:58 10 technology. You'll hear Mr. Holtzman testify that PMC
02:58:02 11 filed this lawsuit only when it felt it had no alternative.

02:58:05 12 Apple now claims that it doesn't need a license to
02:58:11 13 PMC's technology.

02:58:14 14 As you listen to the testimony this week, though,
02:58:16 15 ask yourself, why would Apple spend so much time talking
02:58:21 16 with PMC about PMC's technology and PMC's patents, attend
02:58:26 17 so many meetings with PMC if it didn't think it needed a
02:58:30 18 license from PMC? Why did Apple ask PMC for more
02:58:33 19 information about its technology and intellectual property?
02:58:33 20 Why did Apple string PMC out for so long?

02:58:37 21 So after you've heard the evidence in this case,
02:58:39 22 PMC will ask you to find that Apple has infringed PMC's
02:58:43 23 patent and to award damages sufficient to compensate PMC
02:58:49 24 for Apple's infringement.

02:58:50 25 So what should Apple Pay for having infringed

02:58:54 1 PMC's '091 patent? Later this week you'll hear from
02:58:56 2 Mr. Michael Pellegrino, an intellectual property valuation
02:59:01 3 expert and damage calculation expert.

02:59:03 4 He studied the issues in this case. He reviewed
02:59:06 5 Apple financial information relating to the more than 70
02:59:09 6 billion downloads that Apple has delivered to its customers
02:59:13 7 using FairPlay. He reviewed licenses that Apple has
02:59:16 8 entered into, including licenses that Apple has entered
02:59:20 9 into for DRM technology. He reviewed documents and
02:59:25 10 testimony of Apple's witnesses.

02:59:26 11 Mr. Pellegrino also reviewed licenses that other
02:59:32 12 companies had taken for permission to use PMC's technology
02:59:33 13 and what other companies would pay for those rights.

02:59:34 14 Based on all of this information in his expert
02:59:40 15 analysis, Mr. Pellegrino concluded that Apple should pay to
02:59:43 16 PMC a reasonable royalty of just under half a penny each
02:59:49 17 time it infringed PMC's patent, which is each time Apple
18 used FairPlay to deliver a song, an Apple TV show, a movie
02:59:58 19 or book to one of its customers. This is a very small
03:00:00 20 percentage of the profit that Apple makes of FairPlay which
03:00:05 21 is itself a very small percentage of the profit that Apple
03:00:07 22 makes from iTunes.

03:00:08 23 The patent statute provides that when infringement
03:00:14 24 is found, damages shall be awarded that are no less than a
03:00:17 25 reasonable royalty for the use made of the invention by the

03:00:20 1 infringer. No less than this amount. Multiplying
03:00:25 2 Mr. Pellegrino's reasonable royalty by the more than 70
03:00:29 3 billion times that Apple has infringed PMC's patent over
03:00:31 4 the last nine years works out to be a little more than \$300
03:00:36 5 million.

03:00:39 6 PMC recognizes that's a lot of money to ask you to
03:00:44 7 award PMC to compensate it for Apple's infringement. It's
03:00:48 8 a lot of money, though, because Apple has infringed PMC's
03:00:52 9 patents -- patent so many times, for so long, 70 billion
03:00:57 10 times over nine years and counting.

03:00:58 11 PMC does not begrudge Apple the success that Apple
03:01:02 12 has achieved. To the contrary, PMC respects it. All PMC
03:01:07 13 is asking is that Apple pay a fair and reasonable fee for
03:01:11 14 its use of PMC's patented technology, no more, no less.

03:01:17 15 Thank you for taking the time to be with us here
03:01:21 16 today and all week. Thank you very much for helping us to
03:01:23 17 resolve this important case.

03:01:27 18 THE COURT: All right. Defendant may now present
03:01:33 19 its opening statement to the jury.

03:01:38 20 Would you like a warning on your time, counsel?

03:01:40 21 MR. SERNEL: Your Honor, I'd appreciate a
03:01:42 22 five-minute warning.

03:01:43 23 THE COURT: All right. You may proceed when
03:01:44 24 you're ready.

03:01:45 25 MR. SERNEL: Can you pull up my slides?

03:01:57 1 Ladies and gentlemen, let me start on a point that
03:02:08 2 we can all agree upon. We can all agree that patents are
03:02:12 3 important and respecting the patent rights of others is
03:02:16 4 important.

03:02:17 5 The problem in this case is what PMC is trying to
03:02:23 6 do with its patent. PMC is trying to use its patent to
03:02:27 7 claim credit for something that it did not invent. PMC is
03:02:35 8 trying to use its patent to claim credit for Apple's hard
03:02:39 9 work and innovation, innovation that occurred many years
03:02:41 10 later to address a different problem and set of problems to
03:02:47 11 achieve a different solution. Apple's hard work and
03:02:53 12 innovation deserve respect, too, and the evidence in this
03:02:56 13 case is going to show that Apple did not use PMC's patent
03:03:01 14 and does not infringe PMC's patent.

03:03:03 15 Now, we absolutely give credit to PMC for coming
03:03:12 16 up with an innovation, and you're going to hear about how
03:03:14 17 that innovation came up in the 1980s to address a
03:03:18 18 particular problem that existed at the time with broadcast
03:03:22 19 media and how to personalize broadcast media. We don't
03:03:27 20 take that away from PMC. They came up with a very
03:03:30 21 interesting idea to address a problem at that time.

03:03:32 22 But the evidence is also going to show you that
03:03:34 23 Apple has come up with interesting and great ideas and
03:03:37 24 innovation to address different problems, 16-plus years
03:03:42 25 later, with the advent of the Internet and downloading

03:03:46 1 content over the Internet. The evidence is going to show
03:03:48 2 you that there were thousands of hours of time spent
03:03:51 3 developing a new system to figure out how to safely and
03:03:56 4 securely download content over the Internet and protect
03:03:59 5 Apple users from modern-day hacker technology.

03:04:03 6 The evidence in this case is going to show you
03:04:06 7 that PMC's idea would not work to address the problems that
03:04:11 8 Apple solved with Internet downloads. And, in fact, it
03:04:15 9 would be exactly the wrong way to do it to protect those
03:04:18 10 downloads.

03:04:18 11 So ultimately, the question you're going to be
03:04:21 12 asked to answer in this case is, who has done the taking?
03:04:25 13 Has the taking been done by Apple? Has Apple used PMC's
03:04:29 14 patent? Or has the taking been done by PMC to try to take
03:04:35 15 credit for Apple's innovation and hard work?

03:04:38 16 Ladies and gentlemen, the evidence is going to
03:04:40 17 show you that PMC is doing the taking. They're the ones
03:04:43 18 that have tried to take credit for what they did not
03:04:47 19 invent. Apple did not use PMC's patent. Apple does not
03:04:50 20 infringe PMC's patent.

03:04:52 21 Now, you met Mrs. Smith, my colleague, during jury
03:04:59 22 selection. My name is Marc Sernel. With the two of us,
03:05:04 23 Mr. Ellisen Turner and Mr. Greg Arovas, we'll be presenting
03:05:07 24 the majority of Apple's case.

03:05:08 25 You'll also meet during the trial, Mr. Roger

03:05:12 1 Pantos. He's one of the key engineers that was
03:05:14 2 instrumental in developing the FairPlay software to address
03:05:18 3 these issues with Internet content downloads.

03:05:22 4 And you all shared some information with us during
03:05:24 5 jury selection. I thought it was only fair to tell you a
03:05:27 6 little bit about myself.

03:05:28 7 My name is Marc Sernel. I am married. My wife
03:05:32 8 and I will be celebrating our 25th year anniversary in
03:05:38 9 December. We grew up in the same hometown that we still
03:05:42 10 live in. We have two children that are in high school,
03:05:44 11 that attend the same high school that we attended many,
03:05:47 12 many years ago. We have a senior that's a daughter. A son
03:05:50 13 that's a freshman. And we also lost a son three years ago
03:05:55 14 who was a twin of our son, but Ryan is in our hearts all
03:05:59 15 the time, and we think about him every day.

03:06:00 16 Now, I want to thank you for your attention and
03:06:05 17 time in this case. We appreciate you doing this,
03:06:08 18 especially during this time where we have to wear masks and
03:06:11 19 during a pandemic. We very much thank you for your
03:06:14 20 attention. It's very important to Apple and Mr. Pantos,
03:06:18 21 who developed this technology, that you're going to
03:06:21 22 consider all of the evidence in this case.

03:06:23 23 So this case is about patents. Let's talk about
03:06:28 24 what a patent is all about.

03:06:30 25 You heard during the patent video that a patent is

03:06:33 1 like a land deed, and a land deed, as you know, has precise
03:06:39 2 measurements at the end of it that define the specific
03:06:43 3 property right of the land deed.

03:06:45 4 Just like a land deed, a patent has specific
03:06:50 5 measurements and a claim at the end that defines what the
03:06:55 6 patent covers. And you will see that at the end of this
03:07:00 7 claim, it's got specific words and requirements that set
03:07:03 8 out what you can consider to be a fence line, sort of the
03:07:07 9 property line for the patent.

03:07:08 10 PMC's patent in this case, the '091 patent, has a
03:07:13 11 particular claim, Mr. Kline showed it to you, Claim 13,
03:07:17 12 that will define what that property boundary is, the red
03:07:21 13 fence for PMC's patent. And the question is going to be:
03:07:25 14 Has Apple done anything to build on PMC's property?

03:07:33 15 FairPlay, you will hear evidence about, also
03:07:35 16 staked out land, has staked out land at a different time,
03:07:40 17 many years later, to deal with the problems they were
03:07:42 18 dealing with at the time with respect to Internet content
03:07:48 19 downloads. And PM -- FairPlay has its own patents
03:07:50 20 associated with it, which you'll hear about, that
03:07:52 21 provide -- that show the value of all of the hard work that
03:07:55 22 Apple's engineers put into FairPlay.

03:07:57 23 So, again, ultimately, the question is going to be
03:08:00 24 did PMC -- or did Apple try to build on PMC's land? And I
03:08:06 25 think the evidence is going to show you that PMC is trying

03:08:09 1 to stretch their patent to cover what Apple has done, and
03:08:13 2 the patent -- Apple has not used PMC's patent and, in fact,
03:08:17 3 not infringed PMC's patent. And the evidence is going to
03:08:20 4 show you that Apple developed its technology to address a
03:08:24 5 different set of problems at a much later point in time
03:08:28 6 that required a much different solution.

03:08:30 7 So now let's go back -- back in time. September
03:08:37 8 1987. What were you all doing in September 1987? Let's
03:08:42 9 think back.

03:08:44 10 I was a senior in high school. Starting my senior
03:08:47 11 year of high school, 1987. Little did we know in September
03:08:52 12 1987, PMC was filing the last of its patent applications
03:08:58 13 with new information, new innovations in their patent
03:09:02 14 filings. This is the last time, September 1987, that PMC
03:09:06 15 had any new idea that they put into a patent filing.

03:09:11 16 And so we can look at that, it's sort of frozen in
03:09:15 17 time, this was the last time they did any innovative work,
03:09:18 18 September 1987.

03:09:20 19 And so what problem was PMC trying to solve in
03:09:25 20 September 1987?

03:09:26 21 And to do that, let's think about what kinds of
03:09:33 22 communications, what kinds of media, what kinds of
03:09:36 23 entertainment were people watching and how did they get it
03:09:41 24 at that point in time?

03:09:42 25 And so when you think of September 1987, what

03:09:45 1 kinds of things were we able to get our hands on for
03:09:48 2 entertainment?

03:09:48 3 One thing we had was -- still we had the TVs with
03:09:51 4 the antennas where you could get a signal over the air and
03:09:55 5 receive broadcasts of television.

03:09:57 6 Cable television had just come around in that era,
03:10:00 7 and so you could receive cable television.

03:10:02 8 You also could go to the record store and get
03:10:04 9 records or cassettes. If you wanted to listen to specific
03:10:08 10 music, you could get records or cassettes from the record
03:10:13 11 store.

03:10:13 12 For a computer, there wasn't the ability at that
03:10:17 13 time to download something, to get something over the
03:10:19 14 Internet. The Internet did not exist until many years
03:10:22 15 later. But what you had to do is go get a computer disk,
03:10:26 16 get a floppy disk and put it in a computer and -- for a
03:10:28 17 game or any kind of program that you wanted to use.

03:10:31 18 And then if you wanted to watch a movie, you
03:10:33 19 wanted to watch a specific movie, you went to something
03:10:40 20 that was fairly new, a video rental store, a Blockbuster
03:10:40 21 Video, to go get a VHS tape to watch your favorite movie.

03:10:45 22 So what's -- what about this entertainment at that
03:10:48 23 time that led PMC to think about their invention and what
03:10:51 24 problem they were trying to solve? If you think about it,
03:10:54 25 there's two ways that people were able to get their hands

03:10:57 1 on this entertainment at that time.

03:10:58 2 One way was by getting a physical copy, a computer
03:11:03 3 disk, a record, a cassette, a VHS tape, physically go get
03:11:06 4 something so they could watch a particular thing. That was
03:11:09 5 one way.

03:11:09 6 The second way was to get access to broadcasts,
03:11:13 7 watch whatever channels were on TV. Same thing with radio,
03:11:17 8 whatever radio stations that you could tune your radio to,
03:11:21 9 you could listen to that.

03:11:24 10 And so it was the second way, this broadcast
03:11:26 11 technology that PMC tried to solve one of the limitations
03:11:30 12 with that.

03:11:31 13 And so their idea was, let's try to take this
03:11:34 14 broadcast technology and personalize it. Let's try to
03:11:37 15 personalize it so that people can receive more specific
03:11:42 16 information that they want, not just get the signals that
03:11:46 17 are blasted over the TV airwaves or radio waves, but get
03:11:53 18 specific information that is personalized to that consumer,
03:11:55 19 that viewer. That was the idea of PMC, and we're going to
03:11:57 20 see how they bake that into their claims that they then
03:12:01 21 sought from the Patent Office.

03:12:02 22 This is a section of PMC's patent. And you can
03:12:08 23 see here that the idea that PMC had in 1987 to solve this
03:12:13 24 problem with broadcast media was to embed signals in
03:12:18 25 programming, and then they talked about the advantages of

03:12:21 1 doing that. They -- their idea was, okay, for these
03:12:26 2 broadcast signals, let's stick particular -- broadcast
03:12:31 3 transmissions, let's stick particular signals in those
03:12:35 4 transmissions, embed them in there together. And we had
03:12:37 5 certain advantages that could flow with that.

03:12:39 6 And one of the advantages was, obviously, the
03:12:43 7 signals can't get disassociated from the programming.
03:12:46 8 There's other things about when you put them in -- put them
03:12:48 9 together, advantages that they talk about in their patent.
03:12:51 10 And so this was PMC's idea, how do we personalize broadcast
03:12:55 11 or programming for a particular consumer?

03:13:00 12 And let's think about how this would be done. You
03:13:02 13 can see here, this is just a simple graphic showing how TV
03:13:07 14 airwaves were sent to houses at the time, and everybody
03:13:10 15 basically got the same channels, right? You just -- you
03:13:14 16 turn on your TV, whatever channel -- channels came in over
03:13:18 17 the airwaves, that's what you had to watch.

03:13:21 18 PMC's idea was -- said, let's take these
03:13:25 19 particular signals, embed them in together with the
03:13:28 20 programming, such that we could then personalize what
03:13:32 21 people would get.

03:13:33 22 And so we could use these red signals to
03:13:37 23 personalize what each individual homeowner might be able to
03:13:40 24 see on their TV as part of their viewing experience. This
03:13:45 25 was the PMC idea in 1987 that they were trying to solve

03:13:49 1 with this personalization idea.

03:13:51 2 And so there's an example in PMC's patent about,
03:13:54 3 okay, how would this exactly work? What they talk about
03:13:56 4 here is with respect to a TV show at the time, Wall Street
03:14:02 5 Week, how would we personalize that? And the idea was,
03:14:04 6 when we stick these red signals in with the programming,
03:14:08 7 you can personalize it such that maybe your own stock
03:14:12 8 information, your own stock portfolio information would be
03:14:15 9 included, like, on the bottom or as part of the Wall Street
03:14:19 10 Week programming.

03:14:20 11 That was their idea, try to personalize what
03:14:22 12 you're watching so you're not just watching a TV show that
03:14:27 13 everybody gets. You're personalizing it in some way for
03:14:30 14 the person who's watching it.

03:14:32 15 That was PMC's idea. And, again, it was based on
03:14:37 16 sticking these signals in, embedding signals together with
03:14:41 17 the programming.

03:14:41 18 And then, ultimately, they came up with a business
03:14:44 19 plan to try to develop a business based on this idea;
03:14:47 20 again, this personalization idea, personalized television,
03:14:51 21 personalizing this programming based on putting the signals
03:14:55 22 in. And that's ultimately what PMC's name is, Personalized
03:14:59 23 Media Communications. Personalized media means sticking
03:15:06 24 signals in with programming transmissions. That was PMC's
03:15:10 25 idea, 1987.

03:15:11 1 Now, let's talk a little bit about Apple. We have
03:15:14 2 to jump forward in time to talk about Apple.

03:15:16 3 The first relevant part of this is in the late
03:15:20 4 1990s, and you know between '87 and the late 1990s what
03:15:25 5 happened was the Internet revolution. A ground-breaking
03:15:30 6 change on how we all can access information. We have
03:15:33 7 access to information across the globe at our fingertips
03:15:37 8 because of the Internet and the information highway.

03:15:40 9 And Apple developed a series of products that took
03:15:43 10 advantage of the Internet, the first of which was the iMac,
03:15:50 11 Internet Mac, which came out in 1988. Subsequent to that,
03:15:53 12 there were multiple other "i" products that had Internet
03:15:58 13 capability and could use this great power of the Internet,
03:16:02 14 harness this power of the Internet to make things available
03:16:06 15 on Apple devices that never before could be made available.

03:16:12 16 One other thing that Apple did was -- in trying to
03:16:15 17 harness this power of the Internet was the development of,
03:16:18 18 in 2003, the Internet iTunes Store. And the iTunes Store
03:16:23 19 was an attempt to try to say, okay, we've got this ability
03:16:27 20 now to transmit things over the Internet. Let's make a
03:16:31 21 store available where people could buy music.

03:16:34 22 It used to be that you had to go to the record
03:16:36 23 store to get an album or a cassette. The iTunes Internet
03:16:45 24 Store allowed people to download their favorite music on to
03:16:48 25 a device. In this case, up on the screen you can see an

03:16:53 1 iPod where people could download 50 to 100 songs, have that
03:16:57 2 on that device and be able to listen to their favorite
03:17:00 3 music. The iTunes Store was the first attempt to allow
03:17:00 4 people to download this kind of information.

03:17:02 5 Now, there was amazing opportunities afforded by
03:17:09 6 the Internet, opened up a whole new realm of things that
03:17:12 7 could be done, but there were also a series of huge
03:17:15 8 challenges and problems associated with the Internet and
03:17:20 9 transactions over the Internet.

03:17:22 10 And you can think about it with the iTunes Store,
03:17:26 11 you know, there's credit card information that needs to be
03:17:29 12 exchanged, there's content being distributed over the
03:17:32 13 Internet. And that raises lots of possibilities about --
03:17:36 14 of someone getting in the middle, stealing content,
03:17:40 15 stealing credit card information. There's things like
03:17:44 16 hackers and viruses and malware and all kinds of scary
03:17:49 17 words associated with Internet transactions and Internet
03:17:52 18 communications.

03:17:52 19 And so Apple needed -- when they were setting up
03:17:55 20 this iTunes Store -- to come up with a whole lot of
03:17:58 21 innovations to figure out how are we going to make this
03:18:02 22 safe and secure? We're not going to allow people to steal
03:18:07 23 things that are being transmitted over the Internet, and we
03:18:10 24 need to protect Apple users from, you know, things like
03:18:12 25 viruses and many other problems associated with the

03:18:16 1 Internet.

03:18:17 2 And so what did Apple come up with? Apple came up
03:18:20 3 with FairPlay. Now, FairPlay is software that helps to,
03:18:25 4 again, protect both the content and the users to ensure
03:18:28 5 that these bad things can't happen.

03:18:31 6 FairPlay is actually a collection -- it's a word
03:18:34 7 that talks about a collection of various technology that
03:18:38 8 protects these transactions and protects Apple users.
03:18:42 9 We're going to focus on one part of FairPlay in this case.

03:18:46 10 But there's sort of a foundational approach of
03:18:50 11 FairPlay that is the reason why it does not use PMC's
03:18:54 12 technology and would not use it because it just makes no
03:18:58 13 sense in the context of Internet downloads, and that is
03:19:03 14 ensuring that everything, everything is separated in terms
03:19:08 15 of how it's approached, separating everything from the
03:19:13 16 encrypted content, separate transmissions.

03:19:16 17 And we're going to look right here. This is kind
03:19:18 18 of at the microlevel, when the security information is sent
03:19:23 19 to an Apple device, you will see here -- Mr. Kline talked
03:19:26 20 about a lock. When you see a lock, you can think about
03:19:29 21 encrypted, okay? A lock on a certain portion of it that's
03:19:34 22 encrypted. And you'll see documents in this case that
03:19:37 23 talks -- calls that the private portion. Private portion
03:19:40 24 equals encrypted equals locked.

03:19:44 25 And you see in these documents how there's a

03:19:47 1 separation of the locked portion, the encrypted portion
03:19:51 2 from the other pieces. Apple takes a separation approach,
03:19:56 3 separates this information to ensure that only certain
03:19:59 4 informations in the encrypted part and other things are
03:20:03 5 kept separate, even at the smallest level when you look at
03:20:06 6 the security information that's sent to Apple devices,
03:20:10 7 separation is key to what Apple does.

03:20:11 8 Apple separates in other respects, too, when you
03:20:17 9 take a 20,000-foot view. When information is sent to an
03:20:22 10 Apple device, it's not sent together. Remember back to how
03:20:25 11 PMC does it, it says it embeds the signals in the
03:20:28 12 programming, put them together? With respect to Apple's
03:20:31 13 approach, that -- there's no way they could send all these
03:20:37 14 things together because it would be too insecure. People
03:20:40 15 could steal one package and have everything it needs to
03:20:42 16 cause a lot of mischief.

03:20:44 17 And so what Apple does is it separates these
03:20:47 18 transmissions and says, okay, we're going to send the
03:20:50 19 security information from one place out on the West Coast,
03:20:54 20 we're going to send the programming information --
03:20:58 21 encrypted programming in a completely separate
03:21:01 22 transmission, separating the transmissions from separate
03:21:05 23 servers, and they're even sent at separate times.

03:21:08 24 And so Apple tries to separate multiple levels of
03:21:11 25 separation in terms of how they do this, the exact opposite

03:21:16 1 of the PMC approach, which is to put the signals in with
03:21:20 2 the programming or the encrypted information.

03:21:25 3 And you can see here, it's even separate server
03:21:29 4 networks. It would be a lot easier for Apple to simply
03:21:32 5 say, okay, I'm going to send it from one server, send all
03:21:35 6 the information to the device, and then you've got it.

03:21:37 7 But what Apple does is it set up a completely
03:21:40 8 different server network for the -- for the security
03:21:43 9 information. There's only two of them in the United
03:21:46 10 States, one in Nevada, one in North Carolina. Separate all
03:21:51 11 that out, send that separately from the content, and so the
03:21:56 12 content, the movies, the songs, the apps, come from a whole
03:22:00 13 different set of servers. Again, separation at every
03:22:03 14 level. Multiple levels of separation in terms of what
03:22:06 15 Apple does, exactly 180 degrees the opposite approach of
03:22:10 16 what PMC's idea was in 1987.

03:22:13 17 And you're going to hear about FairPlay and this
03:22:17 18 separation approach and why they did it from two engineers
03:22:21 19 that work at Apple.

03:22:22 20 The first is the senior engineer in charge of the
03:22:26 21 project, Dr. Bud Tribble. And he's going to tell you about
03:22:29 22 the architecture and kind of what they -- what they thought
03:22:32 23 about when they first sat down to design the FairPlay
03:22:36 24 system in 2003.

03:22:37 25 You're also going to hear from Mr. Pantos, as we

03:22:41 1 referenced before, who was the engineer who was
03:22:43 2 instrumental of putting together specific pieces of this,
03:22:48 3 and he will also explain why Apple did what it did and why
03:22:51 4 the separate approach is so important for Internet content
03:22:55 5 downloads.

03:22:55 6 And so you're going to see, in terms of the timing
03:22:59 7 of this, you know, this Internet file sharing only came
03:23:04 8 around in the late 1990s when the Internet revolution was
03:23:08 9 picking up steam.

03:23:09 10 FairPlay came about in the 2003/2004 time frame
03:23:16 11 that set up this safe and secure platform for being able to
03:23:20 12 sell music via iTunes first.

03:23:23 13 Ultimately, iTunes was expanded to movies and
03:23:27 14 other types of media, and then you'll hear about in 2008,
03:23:31 15 how Apple developed the App Store and that the App Store
03:23:35 16 now uses FairPlay for these safe and secure downloads and
03:23:37 17 protection of Apple devices. And along the way, obviously
03:23:42 18 Apple came up with the iPhone and iPad, et cetera, to use
03:23:49 19 iTunes and the App Store to allow people to have these then
03:23:50 20 on their devices.

03:23:51 21 I'll note that Mr. Kline's timeline that he showed
03:23:54 22 you with the Apple and PMC interactions didn't go back to
03:24:00 23 2003. And you can see here, 2003 is when FairPlay came
03:24:09 24 about. The PMC patent didn't issue until 2012, nine years
03:24:14 25 later. And Apple had been doing that, had developed it in

03:24:18 1 2003, separate and apart from any of PMC's technology, not
03:24:25 2 using PMC's technology or its patent.

03:24:27 3 So let's talk a little bit about non-infringement
03:24:33 4 and how to think about infringement and the infringement
03:24:35 5 analysis.

03:24:41 6 Let's think about a simple patent claim, and I've
03:24:44 7 got one here -- a patent claim to a soccer ball. A soccer
03:24:48 8 ball, you can think about, might have five requirements
03:24:51 9 that would be in the patent claim. It would be a ball made
03:24:54 10 of leather, stitched together, filled with compressed air
03:24:57 11 and round. And so these would be the five requirements in
03:25:00 12 the patent claim for the soccer ball, all of which would
03:25:05 13 need to be met or -- to have infringement of a soccer ball
03:25:08 14 patent.

03:25:08 15 Let's say you came up with something that was a
03:25:12 16 football and said, okay, I've got a football, I should be
03:25:16 17 free and clear of the soccer-ball patent. But the person
03:25:19 18 with the soccer-ball patent said they thought you infringed
03:25:22 19 their soccer-ball patent.

03:25:23 20 If you think about the analysis, the way the
03:25:26 21 analysis would work is, well, four of the five requirements
03:25:30 22 actually match up. A football is a ball, it's made of
03:25:35 23 leather, it's stitched together, and it's filled with
03:25:38 24 compressed air. But the fifth, the shape, because it's
03:25:44 25 oblong, it would not infringe the soccer-ball patent. And

03:25:47 1 just like a football is not a soccer ball, one difference
03:25:50 2 makes -- or one little difference makes all the difference
03:25:53 3 in the world. One difference means there's no
03:25:56 4 infringement, and that's the way I would suggest that you
03:26:00 5 think about the way you judge infringement.

03:26:03 6 So let's take a quick look at PMC's '091 Claim 13.
03:26:11 7 You can see this is a lot more complicated than a simple
03:26:15 8 soccer ball patent. It's got a lot of requirements, a
03:26:20 9 method of decrypting programming, and then multiple
03:26:22 10 specific steps to set forth exactly what is required for
03:26:24 11 Apple to be found to be infringing this patent, to be
03:26:27 12 inside that red fence.

03:26:29 13 And I would submit to you, this is not simply key
03:26:32 14 management. I think you're going to hear evidence in this
03:26:34 15 case that PMC did not, did not invent the concept -- the
03:26:40 16 basic concept of key management.

03:26:41 17 This requires much, much more than just a simple
03:26:45 18 key management. It requires specific steps be followed in
03:26:49 19 order for infringement to be found, and the evidence is
03:26:52 20 going to show you that multiple of these steps are not met,
03:26:57 21 are not used by Apple's technology.

03:27:00 22 The first one we'll focus on and the evidence will
03:27:05 23 show you is this concept of an instruct-to-enable signal
03:27:11 24 being put in the transmission, the encrypted transmission,
03:27:19 25 the locked transmission.

03:27:19 1 THE COURT: Five minutes remaining.

03:27:20 2 MR. SERNEL: Remember before we talked about how
03:27:21 3 PMC's idea was putting the signals on, embedding the
03:27:26 4 signals in the programming transmission. That's what this
03:27:32 5 claim is all about, instruct-to-enable signal in the
03:27:36 6 transmission. Embedded in.

03:27:37 7 Apple's approach is exactly the opposite. It
03:27:40 8 doesn't put the signals in the locked transmission. It
03:27:43 9 does everything it can to separate the signal from the
03:27:48 10 transmission. We saw how there's a public part and a
03:27:51 11 private part that's sent. We saw how they separate the
03:27:59 12 server network. They send separate transmissions at
13 separate times.

03:28:00 14 Apple takes the exact opposite approach. The
03:28:02 15 advantages that PMC sought with what they did in the 1980s
03:28:06 16 to solve their problem are absolutely disadvantages for
03:28:10 17 doing it that way in the context of Internet downloads.
03:28:14 18 Apple did it the opposite way, does not use this
03:28:18 19 requirement of PMC's patent. There's no infringement of
03:28:21 20 this requirement.

03:28:22 21 And we talked about the separateness. There's
03:28:26 22 multiple levels of separation. It's not signals in, not
03:28:31 23 sending it together. It is sending everything separate.

03:28:35 24 Now, there's also a few other requirements of
03:28:40 25 PMC's specific method of decrypting programming that are

03:28:44 1 not met. We'll -- the evidence-- we'll get into these
03:28:49 2 throughout the trial. There's a lot of words here and a
03:28:51 3 lot of details.

03:28:54 4 Bottom line is these are ways of doing something
03:28:56 5 to address what PMC was addressing in the 1980s, sending
03:29:00 6 signals that enumerate operations. You'll hear from
03:29:04 7 Mr. Pantos and other witnesses why that's exactly the wrong
03:29:07 8 way to do it. You couldn't do it that way. It's unsafe to
03:29:11 9 send signals like that in these transmissions.

03:29:15 10 And determining a way, determining different ways
03:29:17 11 of doing this, you're going to hear from our witnesses why
03:29:20 12 that's exactly the opposite way than how they did it
03:29:23 13 because you need to ensure the safety and security of
03:29:29 14 Internet downloads.

03:29:30 15 You're going to see at the end of this case that
03:29:32 16 there's multiple reasons -- we only have to show you one,
03:29:35 17 but there's multiple things that PMC will not be able to
03:29:39 18 show Apple does. Apple's FairPlay does not infringe.

03:29:44 19 And at the end of the day, I think the evidence is
03:29:48 20 going to show you that Apple came up with its own
03:29:52 21 technology at a different time to address a different set
03:29:55 22 of challenges to come up with a very different solution.
03:30:02 23 It did not use PMC's patent at all. It did not infringe
03:30:06 24 PMC's patent at all. And ultimately we'll come back at the
03:30:12 25 end of this case, walk you through that evidence, and I

03:30:14 1 think you'll be finding that there's no infringement by the
03:30:18 2 FairPlay technology.

03:30:19 3 I thank you very much for your time and attention.
03:30:22 4 I thank you very much for the time and attention you're
03:30:26 5 going to give us this week, and I look forward to coming
03:30:29 6 back and talk to you at the end of the case about what the
03:30:31 7 evidence has shown.

03:30:32 8 Thank you very much.

03:30:33 9 THE COURT: Counsel, does either party wish to
03:30:37 10 invoke the rule?

03:30:39 11 MR. SERNEL: Yes, please.

03:30:40 12 THE COURT: And do I understand that the rule as
03:30:46 13 invoked would be to exclude expert witnesses so that they
03:30:49 14 could remain in the courtroom, or do you wish them to be
03:30:53 15 covered by the rule, as well?

03:30:56 16 MR. KLINE: I would just say just fact witnesses.

03:30:58 17 MR. SERNEL: Just fact witnesses.

03:30:59 18 THE COURT: All right. Ladies and gentlemen,
03:31:05 19 we're going to take a short recess, but given the
03:31:09 20 invocation of the rule as specified by counsel, when we
03:31:14 21 come back, if you are a fact witness, not an expert
03:31:17 22 witness, then you are required to remain outside the
03:31:19 23 courtroom until you're called to testify as a fact witness
03:31:22 24 in the case. But expert witnesses and designated corporate
03:31:28 25 representatives would be outside of the rule.

03:31:30 1 Ladies and gentlemen of the jury, we're going to
03:31:32 2 take a brief recess, and we're going to try to make it
03:31:35 3 short. When we come back, we'll start with the Plaintiff's
03:31:37 4 first witness. This is one of those opportunities you can
03:31:39 5 simply leave your notebooks closed in your chairs. I'm
03:31:43 6 going to try to keep this to about 10 minutes, and we'll be
03:31:46 7 back and proceed with Plaintiff's first witness at that
03:31:49 8 time.

03:31:49 9 The jury is excused for recess at this time.

03:31:53 10 COURT SECURITY OFFICER: All rise.

03:31:55 11 (Jury out.)

03:31:55 12 THE COURT: The Court stands in recess.

03:48:37 13 (Recess.)

03:48:38 14 COURT SECURITY OFFICER: All rise.

03:48:39 15 THE COURT: Be seated, please.

03:48:39 16 Plaintiffs, are you prepared to call your first
03:48:48 17 witness?

03:48:49 18 MR. KLINE: Yes, we are, Your Honor.

03:48:51 19 THE COURT: All right. Let's bring in the jury,
03:48:53 20 please.

03:48:53 21 COURT SECURITY OFFICER: All rise.

03:48:54 22 (Jury in.)

03:48:54 23 THE COURT: Please be seated.

03:49:23 24 Plaintiff, call your first witness.

03:49:29 25 MR. KLINE: Your Honor, Plaintiffs call Ms. Mary

03:49:32 1 Kazie Metzger.

03:49:33 2 THE COURT: All right. Ms. Metzger, if you'll
03:49:36 3 come forward and be sworn, please.

03:49:52 4 (Witness sworn.)

03:49:53 5 THE COURT: Please come around, have a seat on the
03:49:57 6 witness stand.

03:49:58 7 Do we have binders to distribute?

03:50:06 8 MR. KLINE: I think, Your Honor, you have a
03:50:08 9 binder. I think we handed it up during the recess. And
03:50:10 10 there's a binder on the witness's station, and we've handed
03:50:15 11 -- I guess we're handing out now.

03:50:18 12 THE COURT: That's what prompted my question.

03:50:20 13 MR. KLINE: Pardon me, Your Honor.

03:50:22 14 THE WITNESS: May I take this off?

03:50:24 15 THE COURT: Yes, please. And if you'll adjust the
03:50:27 16 microphone. And there's water in the pitcher if you need
03:50:30 17 it.

03:50:30 18 All right. Mr. Kline, you may proceed.

03:50:33 19 MR. KLINE: Thank you, Your Honor.

20 MARY KATHERINE METZGER, PLAINTIFF'S WITNESS, SWORN

21 DIRECT EXAMINATION

03:50:33 22 BY MR. KLINE:

03:50:33 23 Q. Good afternoon, Ms. Metzger. Would you state your name
03:50:37 24 for the record, please?

03:50:37 25 A. Mary Katherine Metzger.

03:50:39 1 Q. And where do you work?

03:50:40 2 A. I work at PMC, Personalized Media.

03:50:43 3 Q. What does PMC do?

03:50:45 4 A. PMC develops technology, and then we look for partners
03:50:48 5 to -- for them to implement that technology, and then we
03:50:51 6 ensure access to our technology.

03:50:54 7 Q. Generally speaking, what industries are PMC's licensing
03:50:59 8 partners are?

03:51:00 9 A. Telecommunications and Internet activity,
03:51:02 10 transmissions.

03:51:03 11 Q. What is your position at the company?

03:51:05 12 A. I'm the CEO.

03:51:11 13 Q. Where are PMC's headquarters based?

03:51:14 14 A. The headquarters are in Sugar Land, Texas.

03:51:17 15 Q. How many people work for the company?

03:51:18 16 A. There are 10 of us.

03:51:19 17 Q. What are their jobs?

03:51:20 18 A. We have two lawyers, three engineers, two support
03:51:28 19 staff, another business person, and myself and the named,
03:51:35 20 inventor, Mr. John Harvey.

03:51:36 21 THE COURT: Ms. Metzger, pull the microphone a
03:51:39 22 little closer to you, please.

03:51:40 23 THE WITNESS: I'm sorry.

03:51:42 24 THE COURT: Go ahead, counsel.

03:51:44 25 MR. KLINE: Thank you, Your Honor.

03:51:44 1 Q. (By Mr. Kline) You mentioned Mr. Harvey. Again,

03:51:46 2 what's your relationship to Mr. Harvey?

03:51:48 3 A. Mr. Harvey is my husband.

03:51:49 4 Q. Do the two of you work out of the company Sugar Land

03:51:53 5 office?

03:51:53 6 A. No. We have a home office in New York.

03:51:55 7 Q. Has PMC always been based in Sugar Land?

03:51:59 8 A. No. When it was founded, it was in New York where we

03:52:04 9 had been living.

03:52:04 10 Q. And when did it move to Sugar Land?

03:52:06 11 A. It moved to Sugar Land in -- I guess it was about 2012.

03:52:12 12 Q. Why is that?

03:52:13 13 A. Well, at the time, there were seven people working for

03:52:17 14 the company, five of them living in Sugar Land, and it was

03:52:22 15 a practical location. Most of the people who were working

03:52:26 16 for the company were in Texas.

03:52:28 17 Q. Where were you born, Ms. Metzger?

03:52:29 18 A. I was born in Alexandria, Louisiana.

03:52:33 19 Q. Did you grow up there?

03:52:34 20 A. No. My dad was in the oil business, and we moved to

03:52:37 21 Texas when I was four. We lived in Dallas, and then Fort

03:52:41 22 Worth, and then Corpus Christi, and then my parents moved

03:52:45 23 to Houston when I was in college.

03:52:46 24 Q. Where did you go to high school?

03:52:47 25 A. I went to Corpus Christi Ray High School.

03:52:51 1 Q. Do you still have family here in Texas?

03:52:53 2 A. Yes, I do. My sister and my nephew live in Houston.

03:52:58 3 And until last fall, my 104-year-old mother lived in

03:53:03 4 Houston.

03:53:03 5 Q. I think you mentioned this but did you attend college,

03:53:07 6 Ms. Metzger?

03:53:07 7 A. Yes. I went to Duke in North Carolina.

03:53:11 8 Q. What year did you graduate?

03:53:13 9 A. 1968.

03:53:13 10 Q. What did you do after you graduated college?

03:53:16 11 A. I went to Harvard Business School.

03:53:18 12 Q. How big was your class at Harvard?

03:53:20 13 A. There were 750 of us as HBS.

03:53:24 14 Q. Was that even split, male/female?

03:53:27 15 A. No. There were 30 women and the rest were men.

03:53:30 16 Q. When did you graduate from the Harvard Business School?

03:53:33 17 A. That was in 1970.

03:53:34 18 Q. Did you go into the telecommunications industry after

03:53:38 19 you left Harvard Business School?

03:53:40 20 A. No, I spent a couple of years in banking in New York,

03:53:43 21 and then I joined the RCA company, and then spent the rest

03:53:48 22 of my non-PMC career in telecommunications in New York --

03:53:56 23 in the New York area.

03:53:57 24 Q. When did you join the RCA company?

03:54:01 25 A. That was in 1972.

03:54:02 1 Q. And what was your first role there?

03:54:05 2 A. I was working at what was called Corporate Staff, and
03:54:09 3 we were looking at new investments and new business
03:54:14 4 opportunities.

03:54:15 5 Q. Did your role stay the same at RCA?

03:54:19 6 A. No, they were developing a new division, a new
03:54:21 7 subsidiary called RCA American communications, and it was
03:54:25 8 the first domestic communications satellite businesses in
03:54:29 9 the mid '70s.

03:54:30 10 Q. Was that called RCA Americom?

03:54:36 11 A. Yes, it eventually became RCA Americom.

03:54:40 12 Q. What was your role at RCA Americom?

03:54:43 13 A. We were looking at new investments and how to expand
03:54:46 14 the satellite system. And so I worked -- I was always
03:54:49 15 in -- looking at financial analysis of whether something
03:54:53 16 was a good investment.

03:54:54 17 Q. How long were you at RCA Americom?

03:54:57 18 A. I was at RCA Americom until 1979.

03:55:01 19 Q. What did you do next?

03:55:03 20 A. I was recruited by a company that was called
03:55:06 21 TelePrompter, which was at the time the largest cable
03:55:10 22 television company. And I was there for a number of years.

03:55:12 23 Q. What was your role at -- I'm sorry. What year did you
03:55:16 24 join TelePrompter?

03:55:17 25 A. I joined TelePrompter in 1979.

03:55:19 1 Q. And what was your role when you first joined the
03:55:21 2 company?

03:55:22 3 A. Again, it was working on -- it was at the time where
03:55:25 4 cable television was expanding greatly, and we were looking
03:55:28 5 at new investments and building new cable systems.

03:55:32 6 Q. Did your role stay the same, or did it change over time
03:55:35 7 at TelePrompter?

03:55:36 8 A. Well, TelePrompter was bought by -- by Westinghouse,
03:55:41 9 and it became Group W Cable, and we were looking to expand
03:55:46 10 the services and businesses over the cable systems, and so
03:55:50 11 my title became vice president of strategic planning. But,
03:55:55 12 again, we were looking at new investments and new business
03:55:58 13 opportunities.

03:55:59 14 Q. What were some of the new business opportunities?

03:56:01 15 A. Well, we were looking at adding data and -- over the
03:56:05 16 cable systems, and also like adding stereo -- stereo --
03:56:12 17 audio to cable systems and pay-per-view services. So it
03:56:17 18 was a time of high growth. It was a pretty exciting time.

03:56:21 19 Q. How long did you work at TelePrompter?

03:56:24 20 A. Well, TelePrompter became Group W Cable, and I was
03:56:28 21 there until 1986 when Group W Cable was sold to a group of
03:56:33 22 cable operators that divided up the cable systems, and so
03:56:35 23 the Corporate Staff kind of became redundant. And so that
03:56:39 24 was when most of us at Corporate Staff moved on.

03:56:42 25 Q. When you moved on from TelePrompter, what did you do

03:56:45 1 next professionally?

03:56:46 2 A. I and three of my colleagues started a business called
03:56:49 3 Primetime 24, and what we did is we took the networks, ABC,
03:56:59 4 NBC, and CBS off air, and put them up on the satellite and
03:57:03 5 sold them to -- back to our satellite dishes, out in --
03:57:07 6 particularly in rural counties where there was no broadcast
03:57:11 7 television at the time.

03:57:11 8 Q. How long were you with Primetime 24?

03:57:14 9 A. Until about 1991.

03:57:17 10 Q. What did you do next professionally?

03:57:20 11 A. I was doing some consulting in the programming and
03:57:23 12 satellite business, and I did that until, like, 1994.

03:57:28 13 Q. What did you do professionally after that?

03:57:30 14 A. I -- in 1994, I joined PMC full-time as an employee.

03:57:40 15 Q. Who founded PMC?

03:57:41 16 A. Mr. John Harvey, who's my husband, was the founder of
03:57:46 17 PMC.

03:57:46 18 Q. When did you meet Mr. Harvey?

03:57:50 19 A. I met Mr. Harvey in 1973.

03:57:52 20 Q. And where were you working at that time?

03:57:54 21 A. At that time, I was at RCA in New York.

03:57:57 22 Q. How did you happen to meet Mr. Harvey in 1973?

03:58:01 23 A. My former roommate's boyfriend knew John and then he
03:58:06 24 introduced us at a dinner party. It was a set-up.

03:58:10 25 Q. Did you have a lot in common right away?

03:58:12 1 A. Well, he was extremely interested in computers and
03:58:17 2 communication systems, and we were both MBAs. And so we
03:58:22 3 had similar families and we kind of had a lot to talk
03:58:26 4 about, so...

03:58:26 5 Q. And when did you get married?

03:58:28 6 A. In 1977.

03:58:29 7 Q. Any children?

03:58:30 8 A. Yes, we have two daughters, one born in 1981 and one
03:58:35 9 that was born in 1986.

03:58:36 10 Q. What did Mr. Harvey do for work at the time you were
03:58:40 11 married?

03:58:40 12 A. He was in finance. He was -- at that moment I think he
03:58:45 13 was at Pfizer, you know, with a pharmaceutical company, as
03:58:49 14 a controller, you know, financial person.

03:58:53 15 Q. Did that change?

03:58:54 16 A. Yes. And by about 1980, it was clear that he had this
03:59:00 17 passion for telecommunications and where computers and
03:59:06 18 communications came together. And he really wanted to
03:59:10 19 follow that full-time, and so -- and so he did.

03:59:14 20 Q. Did he follow that on his own?

03:59:16 21 A. I'm --

03:59:18 22 Q. You said the work in communications.

03:59:21 23 A. Well, he -- what he wanted to do was to see how
03:59:26 24 telecommunications and computers could come together to
03:59:29 25 make more interesting services and products, and so that's

03:59:33 1 what he wanted to pursue, his passion.

03:59:35 2 Q. And did he pursue that on his own or with anybody else?

03:59:39 3 A. Well, at first it was on his own, and then I introduced

03:59:41 4 him to Mr. Jim Cuddihy, who is the other named inventor,

03:59:47 5 who I had been a colleague of at RCA Americom. And

03:59:54 6 Mr. Cuddihy is an engineer, and so his skills and my

04:00:01 7 husband's creativity, they work well together, and they --

04:00:04 8 I introduced them, and they worked together and have since.

04:00:07 9 Q. When did you introduce Mr. Harvey and Mr. Cuddihy?

04:00:11 10 A. I guess that was in the late 1980s -- no, no, sorry.

04:00:20 11 Late 1970s. Sorry.

04:00:22 12 Q. Did the work together turn out to be fruitful to you?

04:00:26 13 A. Well, yes, it's actually pretty exciting. 103 patents

04:00:31 14 have been issued in -- with both of their names. And the

04:00:36 15 Cuddihy family and we have continued to be friends. And so

04:00:41 16 it's -- it's been -- they -- he also lives in the city, in

04:00:46 17 New York City. And so it's been a very good collaboration,

04:00:49 18 and we're very happy about that.

04:00:51 19 Q. Ms. Metzger, if you wouldn't mind, you have a binder --

04:00:55 20 A. Yes.

04:00:55 21 Q. -- on your desk, I think, there.

04:00:57 22 If you could turn to PTX-0002 in your binder, you

04:01:03 23 should have a tab.

04:01:04 24 A. Yes.

04:01:04 25 Q. Do you have that?

04:01:05 1 A. Yes, I do.

04:01:05 2 Q. Do you recognize that document?

04:01:06 3 A. Yes. This is a document that shows the -- sorry, 002?

04:01:17 4 Q. 002. Maybe if you look at the second page it will help
04:01:21 5 you --

04:01:21 6 A. I'm sorry. I'm sorry. Okay. This is the -- oh, I
04:01:31 7 see. This is the -- this is a copy of the patent.

04:01:33 8 Q. You say the patent. Which patent? It's on your
04:01:38 9 screen.

04:01:38 10 A. Oh, I'm sorry. This is the -- as it's been referred to
04:01:41 11 here as the '091 patent. It's the patent that's being
04:01:44 12 discussed or being litigated in this case.

04:01:47 13 Q. Who owns that patent?

04:01:48 14 A. The patent is owned by Personalized Media, PMC.

04:01:54 15 Q. Is that the Plaintiff in this case?

04:01:56 16 A. Yes, that's the Plaintiff in this case.

04:01:57 17 Q. And when was PMC officially founded?

04:02:00 18 A. In 1987.

04:02:01 19 Q. Under what name? Oh, I'm sorry.

04:02:05 20 A. It was founded under the name -- the National Cable
04:02:10 21 Clearinghouse.

04:02:11 22 Q. Did the name eventually change?

04:02:13 23 A. Yes, the -- as the business -- as the ideas evolved, it
04:02:17 24 became PMC.

04:02:19 25 Q. When the company was first founded, were you involved

04:02:22 1 and working at the company?

04:02:23 2 A. Only a little bit. I was on the board. But primarily,
04:02:33 3 I was working full-time at -- you know, in the cable and
04:02:39 4 satellite business. And so I was busy doing other things.
04:02:42 5 But I did introduce Mr. Harvey to, you know, colleagues and
04:02:47 6 people I knew in the industry.

04:02:48 7 Q. And what year did you join the company full-time?

04:02:51 8 A. I joined the company full-time in 1994.

04:02:54 9 Q. And why?

04:02:55 10 A. Well, the patents were -- a number of the patents were
04:03:00 11 beginning to issue. And we were, you know, a very small
04:03:04 12 company, and so I knew people in the industry, I had people
04:03:07 13 that I knew. And we were raising money, and we were also
04:03:10 14 looking for partners to develop the technology. And so it
04:03:15 15 made sense for me to spend my time and efforts to try and,
04:03:21 16 you know, help grow the business.

04:03:22 17 Q. And were you able to attract investors to the company?

04:03:27 18 A. Yes, yes, we did. At that time, we attracted about 40
04:03:32 19 investors to the company. And that's grown to like 52 as
04:03:38 20 people -- as people have inherited shares and stuff over
04:03:42 21 time.

04:03:42 22 Q. Aside from helping the company raise money when you
04:03:46 23 joined, do you have any other role at PMC?

04:03:48 24 A. Yes, I was helping to introduce Mr. Harvey and his
04:03:57 25 colleague at the time, Mr. McCandless, to colleagues that I

04:04:02 1 knew in the industry, in the telecommunications industry.
04:04:05 2 And I was -- I would go to trade shows and talk to people
04:04:10 3 about what we were -- what PMC was doing and whether there
04:04:15 4 was opportunities for them to utilize some of our
04:04:20 5 technology.

04:04:20 6 Q. And were you able to find any companies in that regard?

04:04:23 7 A. Well, the first one that was very exciting was a
04:04:28 8 company called StarSight, and it was the original
04:04:31 9 electronic program guide company. So having interactive
04:04:35 10 program guide, which was a real advancement in those days.
04:04:39 11 As cable expanded and satellite distribution expanded, all
04:04:44 12 the sudden there were a lot of channels, and you had to
04:04:47 13 figure out what was on, and StarSight was one of the -- was
04:04:50 14 the first company that developed that technology to sell.

04:04:56 15 Q. And how many licensees has PMC partnered with over
04:05:00 16 time?

04:05:01 17 A. Over 20.

04:05:05 18 Q. And if we could show you what's been marked as
04:05:09 19 Plaintiff's Demonstrative Exhibit KM-1. Do you recognize
04:05:13 20 this?

04:05:14 21 A. Yes, I do.

04:05:14 22 Q. What is it?

04:05:15 23 A. This is a list with the logos of our licensees.

04:05:18 24 Q. And the companies that are listed here, did each of
04:05:26 25 these licensing partners obtain the right to use PMC's

04:05:31 1 patented technology?

04:05:32 2 A. Yes. Each of these we had an agreement whereby they
04:05:36 3 paid us compensation to use the patents.

04:05:38 4 Q. And are PMC's agreements with all those companies the
04:05:41 5 same? Is it a cookie-cutter agreement?

04:05:44 6 A. Not at all. Each one was individually negotiated.

04:05:48 7 They're really quite different companies. DirecTV is
04:05:51 8 certainly different from Cisco or Sony. And so each one
04:05:54 9 was separately negotiated. And we came to agreements.

04:05:59 10 Q. Did any of those negotiations result in any of these
04:06:04 11 companies investing in the company?

04:06:06 12 A. Yes. As it turns out, the -- Gemstar that became TiVo,
04:06:15 13 invested in the company, so did Cisco, and so did Motorola.

04:06:17 14 Q. What was PMC's first agreement with another company?

04:06:22 15 A. The first agreement was -- back to the company
04:06:27 16 StarSight, and that was in 1994. And so that was a very
04:06:30 17 important agreement for us, because that was an agreement
04:06:34 18 where a company that had patents and had technology saw
04:06:40 19 that we added to their capabilities. And so that was a
04:06:44 20 very important first license.

04:06:47 21 Q. If you could turn in your binder, please, to PTX-503.

04:06:52 22 And it's also on your screen, if that's easier.

04:06:56 23 The entire document is in your binder, whatever is easier
04:07:00 24 for you.

04:07:00 25 A. It's kind of a big book.

04:07:03 1 Yes, I recognize this.

04:07:04 2 Q. What is it?

04:07:06 3 A. This is the agreement between our company and StarSight
04:07:12 4 Telecast in 1994.

04:07:14 5 Q. Just generally, what were the terms of the agreement?

04:07:16 6 A. They paid us cash compensation, we got stock options,
04:07:23 7 but importantly, they agreed to help us develop our
04:07:25 8 technology and to introduce us potentially to other
04:07:31 9 potential partners.

04:07:31 10 Q. And did they follow through on that agreement, make any
04:07:35 11 introductions?

04:07:36 12 A. Yes, they did. They introduced us to Sony and that
04:07:38 13 ultimately led to an agreement between our company and
04:07:43 14 Sony.

04:07:43 15 Q. So how did the StarSight agreement lead to a
04:07:46 16 relationship with Sony?

04:07:47 17 A. Well, they literally introduced us to the -- to Sony
04:07:55 18 management and -- because we'd kind of gotten a Good
04:08:01 19 Housekeeping seal of approval by StarSight licensing us,
04:08:04 20 then we got in to talk to Sony, and then Sony took a
04:08:09 21 license from us.

04:08:10 22 Q. So if you could turn, please, to PTX-504. Do you have
04:08:15 23 that? And it's on your screen if that's easier.

04:08:17 24 A. Yes, I see this, uh-huh.

04:08:19 25 Q. Do you recognize the document?

04:08:19 1 A. Yes, I do.

04:08:20 2 Q. What is it?

04:08:21 3 A. This is the agreement in 1995 that's among PMC and

04:08:31 4 Sony, and StarSight was also a party to the agreement.

04:08:34 5 Q. And this agreement that we've marked as PTX-504, does

04:08:40 6 it include a license to rights under PMC's '091 patent, the

04:08:45 7 patent that's at issue here?

04:08:46 8 A. Yes.

04:08:46 9 Q. Did Sony make any payments to PMC under the agreement?

04:08:53 10 I'm just asking if they made any payments, not the amount

04:08:56 11 of payments.

04:08:58 12 A. Yes, they made payments.

04:09:01 13 Q. How were those payments structured?

04:09:03 14 A. Those payments were structured as a per-unit box. At

04:09:07 15 the time they were making satellite receiver boxes for the

04:09:13 16 Acura dish business and so they paid us on a per-box basis.

04:09:15 17 Q. Is this the only agreement that PMC has entered into

04:09:18 18 with Sony?

04:09:18 19 A. No, happily in part because I think they knew us, but

04:09:22 20 we contacted them, again, and in 2012, they entered into a

04:09:28 21 much broader license with us, and they were going into

04:09:35 22 smart TVs and PlayStation, which is, of course, an

04:09:40 23 enormously successful product of theirs, and so in 2012,

04:09:44 24 they entered into a much broader license with us.

04:09:46 25 Q. If you could turn to PTX-502, please. You have it

04:09:52 1 there on your screen.

04:09:54 2 A. Yes.

04:09:54 3 Q. Do you recognize that document?

04:09:56 4 A. Yes.

04:09:58 5 Q. What is it?

04:09:59 6 A. This is the 2012 agreement between PMC and Sony

04:10:08 7 Corporation.

04:10:08 8 Q. Did your relationship with StarSight, which led you to

04:10:12 9 Sony, did that lead to any other important agreements for

04:10:15 10 the company?

04:10:16 11 A. Yes, it did. StarSight was ultimately purchased by a

04:10:21 12 company then called Gemstar, and it -- and so they

04:10:26 13 contacted us because they wanted a broader license than the

04:10:30 14 StarSight license had been. And so we ultimately ended up

04:10:33 15 with an agreement with Gemstar that -- whereby they bought

04:10:40 16 30 percent of the company and also bought -- paid for a

04:10:44 17 license -- several licenses, actually.

04:10:46 18 Q. I'd like to show you a document -- it's in your

04:10:50 19 binder -- PTX-492. It will come up on the screen also.

04:10:57 20 A. The binder has kind of come apart.

04:11:00 21 Q. Sure. Sorry.

04:11:01 22 A. Yes. This is -- 492 --

04:11:04 23 Q. Yes.

04:11:05 24 A. -- is -- this is the agreement between Gemstar and PMC

04:11:15 25 for this variety of licenses, and then they also invested

04:11:18 1 in the company.

04:11:19 2 Q. You say "a variety of licenses." Did that include
04:11:21 3 rights to practice the technology described in the '091
04:11:25 4 patent at issue in this case?

04:11:26 5 A. Yes, it did.

04:11:27 6 Q. Does PMC have -- has PMC ever entered into any
04:11:33 7 agreement with Cisco?

04:11:34 8 A. Yes, it has.

04:11:35 9 Q. If you could turn to PTX-490, please. 490.

04:11:41 10 A. Yes, I see that.

04:11:42 11 Q. And what is that?

04:11:45 12 A. This is the agreement with Cisco Systems between
04:11:56 13 Personalized Media.

04:11:56 14 Q. Generally, what were the terms?

04:11:58 15 A. The terms there were they took a license to our patent
04:12:01 16 portfolio, and they also made an investment in the company.

04:12:03 17 Q. The license that they took, did that include a grant of
04:12:06 18 rights under the '091 patent?

04:12:08 19 A. Yes, it did.

04:12:11 20 Q. Could you turn, please, to PX-501?

04:12:19 21 A. Yes, I see it.

04:12:22 22 Q. Do you recognize the document?

04:12:23 23 A. Yes, this is also a license and investment agreement
04:12:27 24 between PMC and Motorola.

04:12:29 25 Q. Did the license include rights to the '091 patent?

04:12:32 1 A. Yes, it did.

04:12:33 2 Q. Thank you.

04:12:35 3 So sorry -- again, overall, how long have you been
04:12:40 4 with the company?

04:12:41 5 A. Since 1994.

04:12:42 6 Q. Good decision?

04:12:43 7 A. Yes. I think so. I think we've been successful.

04:12:48 8 Q. And in what way?

04:12:49 9 A. Well, like I said, we have over 20 licensees. We and
04:12:57 10 our partners, our investors, have made money. And I think
04:13:04 11 we've done well.

04:13:05 12 Q. If I could ask you to turn to PTX-1154. Do you see
04:13:11 13 that?

04:13:12 14 A. Yes.

04:13:13 15 Q. What is that? Do you recognize it?

04:13:16 16 A. Yes, this is the cover of a magazine that -- if I --

04:13:21 17 Q. Sure, yes.

04:13:23 18 A. This is the cover -- this the physical magazine. It's
04:13:26 19 called Inventor's Digest. And Mr. Harvey was on the cover
04:13:34 20 of this magazine in 2012.

04:13:36 21 Q. And how does it describe Mr. Harvey?

04:13:39 22 A. It says: Inventor John Harvey, a 30-year overnight
04:13:43 23 success.

04:13:43 24 Q. What do you take that to mean?

04:13:44 25 A. Well, as you probably remember, the original patent was

04:13:49 1 filed in 1981, and we got our first patent in 1987. But
04:13:55 2 this is -- but in the 2011/'12 period where a lot of these
04:14:05 3 patents issued, including the '091 patent, that -- that
04:14:08 4 Mr. Harvey was being recognized as -- all of this hard work
04:14:13 5 had come into fruition. So we were very pleased about
04:14:16 6 this.

04:14:21 7 Q. Who handles license negotiations for the company?

04:14:25 8 A. Today, Mr. Tom Scott, who is here today and -- who is a
04:14:31 9 patent lawyer, and Mr. Boyd Lemna, who is an engineer.

04:14:35 10 They are the part of it --

04:14:36 11 Q. Oh, I'm sorry. Have they always handled the license
04:14:39 12 negotiations for PMC?

04:14:40 13 A. They have been part of it, but our principal patent --
04:14:45 14 or license negotiator was a gentlemen named Gerald
04:14:50 15 Holtzman, and he -- he unfortunately passed away three
04:14:55 16 years ago, and when that happened, we -- between Mr. Scott
04:14:59 17 and Mr. Lemna, we've continued with that team.

04:15:02 18 Q. What was Mr. Holtzman's role at PMC?

04:15:07 19 A. Well, he had a -- he was a lawyer, and he had given us
04:15:13 20 some kind of friendly advice from the early days. But then
04:15:20 21 in the early 2000s, he was working with us more and more,
04:15:24 22 and then he ultimately -- he, you know, came on staff full
04:15:27 23 time.

04:15:28 24 Q. How did you meet Mr. Holtzman?

04:15:30 25 A. Mr. Holtzman and I were in the same physics class at

04:15:35 1 Corpus Christi Ray High School when we were seniors in high
04:15:41 2 school. And we had stayed -- our families had stayed
04:15:45 3 friends over years.

04:15:46 4 Q. Do you know whether Mr. Holtzman was involved in
04:15:49 5 negotiations with Apple on behalf of PMC?

04:15:51 6 A. Yes, I do.

04:15:51 7 Q. And did he keep you informed of his progress in that
04:15:55 8 regard?

04:15:55 9 A. Yes. Mr. Holtzman was one of the people living in
04:16:02 10 Sugar Land, Texas, and virtually every morning on his way
04:16:05 11 to work, driving to work, he would call me and we would
04:16:08 12 discuss not only his interaction with Apple, but with all
04:16:11 13 the companies that we were reaching out to and talking to
04:16:15 14 and potentially having licenses with and many of them that
04:16:20 15 you saw on that page.

04:16:21 16 Q. Do PMC employees use company email for their business
04:16:27 17 communications?

04:16:27 18 A. Yes, we, like almost everybody else, extensively use
04:16:32 19 email.

04:16:33 20 Q. Did Mr. Holtzman?

04:16:33 21 A. Yes, he did.

04:16:34 22 Q. If you could turn to PTX-69, please. And it's on your
04:16:44 23 screen, too.

04:16:46 24 A. Maybe that's easier.

04:16:47 25 Q. Whatever is easiest.

04:16:49 1 A. Yes, I see this. This is --

04:16:50 2 Q. Do you recognize --

04:16:51 3 A. I'm sorry --

04:16:52 4 Q. I'm sorry. Do you recognize the document?

04:16:53 5 A. Yes, I do.

04:16:54 6 Q. And?

04:16:56 7 A. This is an email from Mr. Holtzman to a Mr. Edward
04:17:00 8 Scott at Apple.

04:17:01 9 Q. What's the date of the document?

04:17:03 10 A. The date is October of 2009.

04:17:08 11 Q. What's the subject line?

04:17:09 12 A. The subject line is PMC Intellectual Property.

04:17:17 13 Q. In looking at Mr. Holtzman's email, can you read the
04:17:20 14 first paragraph for the jury?

04:17:23 15 A. Sure. It says: Your email yesterday requested details
04:17:25 16 concerning PMC's pending patent applications. I
04:17:29 17 synthesized these materials trying to avoid overwhelming
04:17:33 18 you with information and hope I'm responsive to your
04:17:37 19 request.

04:17:38 20 Q. Could you turn to Page 2 of the document? You'll see a
04:17:40 21 list there.

04:17:41 22 A. Yes, I see this is a list of attachments.

04:17:44 23 Q. And --

04:17:45 24 A. I think there's even another page where there's like 12
04:17:49 25 attachments.

04:17:49 1 Q. If we come back, please, though.

04:17:52 2 Item No. 2, what is that?

04:17:55 3 A. No. 2 says: A description of the relationship between
04:17:59 4 the issued PMC patents and the pending PMC patent
04:18:03 5 applications illustrating the chain of property --
04:18:07 6 priority.

04:18:08 7 Q. Do you know whether Mr. Holtzman provided that to
04:18:14 8 Mr. Scott at Apple?

04:18:15 9 A. Yes, this Item 2 was an attachment to this email.

04:18:19 10 Q. If you could look at PTX-77, please.

04:18:24 11 A. Yes, this is Item -- this is the second attachment
04:18:28 12 showing the priority application.

04:18:34 13 Q. Thank you.

04:18:35 14 And I'd like to look at one last, I think,
04:18:38 15 document. PTX-521.

04:18:40 16 A. Yes, I see it.

04:18:41 17 Q. Do you recognize the document?

04:18:43 18 A. Yes, this is from January of 2010. And it says: Ed,
04:18:52 19 thanks for your prompt reply. To assist your review, I'm
04:18:55 20 attaching a summary of each of the 55 pending applications
04:18:58 21 which are beginning to issue as patents (with either a 1981
04:19:03 22 or a 1987 priority), and the claims of some of our cases
04:19:09 23 that will issue first. (Notices of allowances, NOAs, are
04:19:21 24 expected to issue -- are expected in the next 30 days.)
04:19:23 25 This shorthands some of the information I sent in my email

04:19:27 1 of 10/30, which provides fuller background. The portfolio
04:19:33 2 really is fundamental to many of Apple's businesses. It is
04:19:37 3 sound and well-prosecuted. It would be really important to
04:19:40 4 Apple.

04:19:40 5 Q. If you could turn to the next page of this document.

04:19:47 6 And what is that?

04:19:48 7 A. This is what Mr. Holtzman was referring to. It's the
04:19:53 8 description of 55 different patent applications, and he
04:20:02 9 gives the application number and our shorthand description,
04:20:07 10 and then a description -- a written description of each of
04:20:11 11 these 55 applications.

04:20:13 12 Q. Was PMC ever able to reach an agreement with Apple?

04:20:16 13 A. No, we were not.

04:20:17 14 Q. What happened?

04:20:18 15 A. Well, after six years of discussions and meetings and
04:20:23 16 back and forth, basically we gave up in 2014, that after
04:20:30 17 six years that we didn't think we'd come to an agreement.

04:20:33 18 Q. And who authorized PMC to file this lawsuit?

04:20:36 19 A. I did.

04:20:37 20 Q. Why?

04:20:37 21 A. We thought that they -- that after six years of back
04:20:44 22 and forth and asking for information and we provided it and
04:20:49 23 we didn't get anywhere after six years, we felt like the
04:20:52 24 only way we could protect our rights was to come to court.

04:20:57 25 Q. Thank you very much, Ms. Metzger.

04:21:03 1 MR. KLINE: No further questions at the moment,
04:21:05 2 Your Honor.

04:21:05 3 THE COURT: You pass the witness?

04:21:06 4 MR. KLINE: Yes, I pass the witness. Thank you.

04:21:08 5 THE COURT: All right. Cross-examination by the
04:21:09 6 Defendant.

04:21:10 7 THE WITNESS: May I just get a --

04:21:12 8 THE COURT: Help yourself.

04:21:22 9 MS. SMITH: Your Honor, may I pass up a couple of
04:21:24 10 binders, please?

04:21:26 11 THE COURT: You may.

04:22:06 12 All right. Ms. Smith, you may proceed.

04:22:07 13 MS. SMITH: Thank you, Your Honor.

14 CROSS-EXAMINATION

04:22:08 15 BY MS. SMITH:

04:22:08 16 Q. Good afternoon, Ms. Metzger. My name is Melissa Smith
04:22:11 17 and I represent Apple. Welcome to Marshall.

04:22:13 18 A. Thank you.

04:22:13 19 Q. Now, Ms. Metzger, you had a nice conversation with your
04:22:21 20 lawyer about a lot of different things, but you understand
04:22:27 21 that the first question that Judge Gilstrap has for this
04:22:29 22 jury, the question that this jury is going to be concerned
04:22:33 23 about, is whether or not Apple infringes your husband's
04:22:39 24 '091 patent. Do you have that understanding?

04:22:40 25 A. Yes.

04:22:41 1 Q. And you understand that the jury is going to go about
04:22:46 2 their work deciding that question by comparing the claims
04:22:51 3 in the patent to the accused product that Apple makes,
04:22:54 4 FairPlay. Do you have that understanding?

04:22:55 5 A. Yes, I do.

04:22:56 6 Q. Okay. Now, you don't have a technical degree, do you,
04:23:03 7 ma'am?

04:23:03 8 A. No, I do not.

04:23:04 9 Q. Okay. And you're not going to offer any expert
04:23:06 10 testimony as to infringement, are you?

04:23:08 11 A. No, I'm not.

04:23:09 12 Q. You've not read -- you looked at the '091 patent with
04:23:14 13 your lawyer; is that correct?

04:23:15 14 A. Looked at. I have not read it. But I have looked at
04:23:22 15 it.

04:23:23 16 Q. You beat me to the punch. But you have not read the
04:23:26 17 '091 patent, have you?

04:23:27 18 A. I have not read the '091 patent.

04:23:29 19 Q. And you own Apple products, do you not?

04:23:33 20 A. I do.

04:23:33 21 Q. A whole host of Apple products; is that correct?

04:23:35 22 A. I own an iPad and an iPhone.

04:23:39 23 Q. But you're not holding yourself out as a -- as any kind
04:23:42 24 of technical expert in how Apple products work; is that
04:23:45 25 correct?

04:23:45 1 A. No, I'm not an expert.

04:23:47 2 Q. And you call him Mr. Harvey, but you -- this is your
04:23:56 3 husband?

04:23:57 4 A. I think the protocol in this Court is to call people by
04:24:02 5 their full names.

04:24:03 6 Q. Of course. This is Mr. Harvey?

04:24:06 7 A. This is Mr. Harvey.

04:24:07 8 Q. And you spoke to the jury about that magazine article,
04:24:10 9 but you brought that up more as a proud wife; is that
04:24:14 10 correct?

04:24:14 11 A. No, it was -- no, it was important to our business.

04:24:15 12 Q. Okay. But that has nothing to do with what the jury is
04:24:20 13 here to do today, to compare the claims to the accused
04:24:25 14 product; is that correct?

04:24:25 15 A. The jury's responsibility is claims versus the patent.

04:24:28 16 Q. Thank you, ma'am.

04:24:30 17 Now, your husband, Mr. Harvey's, invention was
04:24:37 18 made about 35 years ago; is that correct?

04:24:43 19 MR. KLINE: Objection. Beyond the scope.

04:24:45 20 THE COURT: Overruled.

04:24:46 21 Q. (By Ms. Smith) Ma'am, was your husband's invention
04:24:49 22 created about 35 years ago?

04:24:52 23 A. The -- and what he -- I really don't understand the
04:24:57 24 question, because there was a disclosure, and then there
04:25:07 25 was the claims were filed later, but it was --

04:25:11 1 Q. Okay.

04:25:12 2 A. I mean, I don't think that's a real question.

04:25:17 3 Q. Okay. Let me make it easier. The -- there were two
04:25:20 4 patent filings. One -- and that we're going to be talking
04:25:24 5 about today. One was in 1987; is that correct?

04:25:26 6 A. Yes.

04:25:26 7 Q. And that's about 34, 35 years ago?

04:25:30 8 A. Right.

04:25:31 9 Q. Okay. Now, you said that your company dealt with
04:25:34 10 Internet transmissions. Do you remember telling your
04:25:36 11 lawyer that?

04:25:36 12 A. Yes.

04:25:36 13 Q. Okay. Mr. Harvey, your husband, certainly wasn't
04:25:44 14 talking to you about the Internet back in the '80s, was he?

04:25:46 15 A. He was talking about data transmissions and other
04:25:51 16 telecommunications.

04:25:52 17 Q. But he wasn't talking about the Internet back in 1981,
04:25:55 18 was he?

04:25:56 19 A. Nobody was talking about the Internet in 1981.

04:25:59 20 Q. And he certainly wasn't talking about, back in 1981,
04:26:04 21 about predicting the way technology would develop, was he?

04:26:08 22 A. I'm not sure that I agree with that. He was -- he had
04:26:15 23 a vision of how technology was going to develop, and that's
04:26:18 24 why he filed a 500-page patent application describing all
04:26:23 25 the things that he thought were going to come to pass.

04:26:26 1 Q. Okay. Now, Ms. Metzger, I'm going to direct your
04:26:30 2 attention to your notebook in front of you.

04:26:33 3 And you've given some testimony previously,
04:26:36 4 haven't you?

04:26:38 5 Did you get your notebook?

04:26:40 6 A. No.

04:26:40 7 Q. I apologize. I handed two notebooks up. I don't think
04:26:43 8 one of them made it to you. I apologize, Ms. Metzger.

04:26:50 9 THE WITNESS: Thank you, Your Honor.

04:27:00 10 Q. (By Ms. Smith) All right. If you'll take a look at
04:27:02 11 the testimony from 7/10 of '13. It should be about the
04:27:07 12 fourth tab on your -- in your binder.

04:27:10 13 A. Yes, I see it.

04:27:11 14 Q. All right. If you will go to Page 227.

04:27:30 15 A. Okay. So this is from July of 2013?

04:27:34 16 Q. Yes, ma'am. Yes, ma'am.

04:27:35 17 A. Uh-huh.

04:27:36 18 Q. So we're looking at Page 227.

04:27:40 19 A. Yes.

04:27:40 20 Q. And if you'll go down to Lines 13 through 16.

04:27:44 21 A. Uh-huh. Yes.

04:27:51 22 Q. And does that help refresh your recollection about your
04:27:54 23 conversations with your husband back in the '80s?

04:27:57 24 A. Well, what it says is I recall no conversations
04:28:07 25 predicting the way telecommunication -- technology would

04:28:11 1 develop.

04:28:11 2 Q. And that was my question. Thank you, ma'am.

04:28:13 3 But technology has changed a little bit in the
04:28:15 4 last 35 years, hasn't it?

04:28:18 5 A. Yes, it has.

04:28:19 6 Q. And Personalized Media hasn't had any patented
04:28:25 7 inventions in the last 35 years? No new patent filings?

04:28:30 8 A. No new patent filings since --

04:28:33 9 Q. And Apple has come up with a whole lot of patent
04:28:36 10 filings and a whole lot of inventions in the past 35 years,
04:28:40 11 has it not?

04:28:40 12 A. Yes, it has.

04:28:42 13 Q. Okay. You'd agree Apple is an innovative company?

04:28:45 14 A. Yes.

04:28:45 15 Q. You'd even agree that Apple has created entirely new
04:28:50 16 industries?

04:28:50 17 A. Yes, I would.

04:28:52 18 Q. Okay. And PMC, Personalized Media, hasn't sold any
04:28:58 19 commercial products in the past 10 years, has it?

04:29:01 20 A. We haven't sold any products, no.

04:29:04 21 Q. Okay. And PMC hasn't sold any products in the last 20
04:29:07 22 years, has it?

04:29:08 23 A. No.

04:29:08 24 Q. And PMC has not sold any products in the last 35 years,
04:29:12 25 has it?

04:29:13 1 A. No.

04:29:18 2 Q. Okay.

04:29:19 3 MS. SMITH: Now, if I could have PTX-69, please.

04:29:24 4 Q. (By Ms. Smith) Now, you showed the jury this document,
04:29:28 5 did you not?

04:29:28 6 A. Oh, yes.

04:29:29 7 Q. And where is your name on this email?

04:29:31 8 A. My name is not on this email.

04:29:33 9 Q. Okay.

04:29:34 10 MS. SMITH: If I could see PTX-521, please.

04:29:37 11 Q. (By Ms. Smith) Does this look like the second email
04:29:41 12 you showed the jurors?

04:29:42 13 A. Yes, it is.

04:29:43 14 Q. Where is your name on that email?

04:29:44 15 A. My name is not on this email.

04:29:46 16 Q. But who we do see is a Mr. Gerald Holtzman; is that
04:29:50 17 correct?

04:29:50 18 A. Yes.

04:29:51 19 Q. And you're aware that Mr. Holtzman is going to come and
04:29:55 20 testify in this trial; is that right?

04:29:56 21 A. He's going to what? He's passed away.

04:30:00 22 Q. I apologize.

04:30:00 23 A. He's going to testify by deposition.

04:30:04 24 Q. By deposition. Of course, by deposition.

04:30:05 25 Are you also aware there's going to be a couple of

04:30:07 1 Apple employees that come and testify about licensing, as
04:30:10 2 well, in this trial?

04:30:11 3 A. Yes, of course.

04:30:12 4 Q. Okay. Respectfully, ma'am, would you -- would you
04:30:17 5 agree that, if you want to know the whole story about how
04:30:19 6 these transactions took place, the best source might be the
04:30:22 7 folks that were actually involved?

04:30:32 8 A. I'm not sure what -- I'm sorry, but I'm not sure what
04:30:34 9 your question was.

04:30:35 10 Q. Well, you weren't involved in any of the discussions
04:30:39 11 with Apple, were you?

04:30:41 12 A. I wasn't personally involved in the discussions, but I
04:30:46 13 was informed of them, of course.

04:30:47 14 Q. But you weren't involved in any of the discussions with
04:30:50 15 Apple?

04:30:50 16 A. I was not in the meetings with Apple.

04:30:57 17 MS. SMITH: You can take that down.

04:30:59 18 Q. (By Ms. Smith) Now, you hold yourself out as having
04:31:04 19 led PMC's licensing program for the last 25 years; is that
04:31:07 20 correct?

04:31:07 21 A. No, I said that I was the CEO.

04:31:12 22 Q. Okay.

04:31:12 23 MS. SMITH: If we could see DTX-1493, please, at
04:31:17 24 3.

04:31:18 25 Q. (By Ms. Smith) Do you recognize that, ma'am?

04:31:19 1 A. Yes. Yes, this is from our website.

04:31:28 2 Q. All right. If you could look at that first line, it
04:31:31 3 says: Ms. Metzger has led PMC's licensing program since
04:31:35 4 1994. Do you dispute that?

04:31:36 5 A. What I'm saying -- what we were saying is that I've
04:31:40 6 been involved in the company since 1994, and I -- of
04:31:42 7 course, I'm the CEO, so I know about the licenses, I
04:31:45 8 approve of the licenses. But what we were talking about
04:31:49 9 before is whether I personally negotiated the licenses,
04:31:53 10 and, no, I don't.

04:31:55 11 Q. Okay.

04:31:55 12 MS. SMITH: I'll object to non-responsive, Your
04:32:02 13 Honor.

04:32:02 14 THE COURT: Overruled.

04:32:04 15 MS. SMITH: Thank you.

04:32:05 16 Q. (By Ms. Smith) Now, you showed the jury a few PMC
04:32:08 17 licenses, correct?

04:32:09 18 A. Yes.

04:32:09 19 Q. And you've hired a -- your attorneys have hired a
04:32:12 20 damage expert to come to trial; is that correct?

04:32:14 21 A. Yes.

04:32:14 22 Q. And his name is Mr. Pellegrino?

04:32:16 23 A. Yes.

04:32:17 24 Q. And you gave all those licenses that you discussed with
04:32:19 25 the jury to Mr. Pellegrino, did you not?

04:32:21 1 A. The company did. The attorneys did.

04:32:23 2 Q. Okay. Are you aware that your own damage expert said
04:32:29 3 about those licenses, and I quote: I do not find any of
04:32:34 4 the agreements sufficiently comparable to the license at
04:32:38 5 issue between PMC and Apple?

04:32:42 6 A. So you said am I aware that he said that?

04:32:45 7 Q. Yes.

04:32:46 8 A. No, I'm not.

04:32:47 9 Q. Would it surprise you to know that he said that?

04:32:49 10 A. I don't know in what context he said that.

04:32:52 11 Q. Now, you talked about the Sony license, do you recall
04:32:57 12 that?

04:32:57 13 A. Yes, of course.

04:32:57 14 Q. And you mentioned that that license was a per-unit box;
04:33:00 15 is that correct?

04:33:00 16 A. Yes.

04:33:04 17 Q. Now, if a licensee prefers a lump sum instead of a
04:33:10 18 running royalty or a per-unit box, PMC accommodates the
04:33:13 19 licensee's preference for lump sum; is that correct?

04:33:16 20 A. Yes, we have.

04:33:17 21 Q. I want to talk to you a little bit about the companies
04:33:25 22 that you said invested in PMC.

04:33:29 23 Let's start with Cisco. That was one of the
04:33:31 24 companies that you said invested in PMC?

04:33:34 25 A. Yes.

04:33:34 1 Q. Okay. Does Cisco still own any shares of PMC?

04:33:37 2 A. No, they decided to exchange those back for another
04:33:43 3 license.

04:33:45 4 MS. SMITH: And if I could see PTX-490, please.
04:33:59 5 There we go, thank you.

04:34:00 6 Q. (By Ms. Smith) And if I can direct your attention to
04:34:02 7 the date on the top left. That says May 18th, 2011, does
04:34:06 8 it not?

04:34:07 9 A. Yes, it does.

04:34:07 10 Q. And you told the jurors that that included the rights
04:34:10 11 to the '091 patent, did you not?

04:34:11 12 A. I -- the '091 application was included in this.

04:34:18 13 Q. Okay. And the '091 actually was only an application,
04:34:23 14 it didn't actually issue as a patent until May of 2012; is
04:34:27 15 that correct?

04:34:27 16 A. Yes, that's true.

04:34:28 17 Q. You mentioned Motorola?

04:34:34 18 A. Yes.

04:34:34 19 Q. And does Motorola still own -- in this modern day, does
04:34:42 20 Motorola own the shares in PMC?

04:34:45 21 A. They actually decided to trade the ownership shares
04:34:48 22 back to -- for a broader license.

04:34:51 23 Q. Okay. And TV Guide, does TV Guide or Gemstar, what it
04:34:58 24 was called back in the day, do they own any shares of PMC
04:35:02 25 currently?

04:35:02 1 A. No.

04:35:16 2 MS. SMITH: Now, if I could see PTX-77.

04:35:20 3 Q. (By Ms. Smith) You took a look at this with your
04:35:23 4 lawyer.

04:35:23 5 A. Yes.

04:35:23 6 Q. Now, you'd agree that none of these applications that
04:35:26 7 issued are the applications for the '091 patent, are they?

04:35:29 8 A. I believe down to the next to the last paragraph, it
04:35:33 9 says: 55 other actively persecuted -- prosecuted
04:35:40 10 applications remain pending.

04:35:41 11 Q. And so my question is, is the application for the '091
04:35:46 12 patent listed on this list?

04:35:49 13 A. Is the number --

04:35:54 14 Q. Yes, ma'am.

04:35:55 15 A. -- of the application?

04:35:56 16 Q. Yes, ma'am.

04:35:57 17 A. The number of the application is not on this list.
04:35:59 18 It's in the 55 others.

04:36:01 19 Q. Thank you. Now, as CEO of PMC, you don't make
04:36:16 20 allegations about patent infringement lightly, do you?

04:36:20 21 A. Absolutely not.

04:36:20 22 Q. You give some serious thought before suing somebody,
23 don't you?

04:36:29 24 A. Absolutely.

04:36:29 25 Q. You don't sue first and ask questions later, do you?

04:36:32 1 A. I'm not sure what that means.

04:36:35 2 Q. Well, you need all the -- you need to understand all
04:36:38 3 the facts --

04:36:39 4 A. Yes, that we don't sue somebody willy-nilly. We -- the
04:36:45 5 lawyers and the engineers study our patents compared to
04:36:50 6 what we believe infringers are doing.

04:36:54 7 Q. And as CEO of Personalized Media, you used the words
04:36:58 8 that you authorized this litigation, the filing of this
04:37:01 9 suit, did you not?

04:37:02 10 A. Yes, I agreed to -- that we were going to file the
04:37:07 11 suit.

04:37:08 12 Q. But it's a fact, is it not, that when Personalized
04:37:12 13 Media filed this lawsuit, you'd never even heard of
04:37:15 14 FairPlay before, had you?

04:37:16 15 A. You mean the name, FairPlay, as -- as the encryption
04:37:29 16 mechanism?

04:37:29 17 Q. I mean, you'd never heard of FairPlay when you filed
04:37:33 18 this lawsuit accusing FairPlay, ma'am.

04:37:36 19 A. FairPlay is not a term that I was familiar with.

04:37:39 20 Q. In fact, it was over a year after you filed this
04:37:42 21 lawsuit that someone asked you in testimony if you knew
04:37:47 22 what FairPlay was, and you said you didn't; is that
04:37:49 23 correct?

04:37:49 24 A. No, I didn't know what FairPlay was. I certainly knew
04:37:53 25 the products were encrypted and protected.

04:37:57 1 Q. Thank you, ma'am.

04:37:58 2 MS. SMITH: I'll pass the witness.

04:38:00 3 THE COURT: Redirect by the Plaintiff?

04:38:01 4 MR. KLINE: Nothing further, Your Honor.

04:38:02 5 THE COURT: All right. You may step down,

04:38:04 6 Ms. Metzger.

04:38:06 7 THE WITNESS: Excuse me, this book has come apart.

04:38:09 8 THE COURT: Just leave it there, please.

04:38:24 9 Plaintiff, call your next witness.

04:38:26 10 MR. KLINE: PMC calls Gerald Holtzman by videotape
04:38:32 11 designations, Your Honor.

04:38:32 12 THE COURT: All right. Do you have the time
04:38:34 13 allocations on this deposition?

04:38:37 14 MR. KLINE: 51 minutes. 51 minutes, 32 seconds, I
04:38:44 15 believe, Your Honor.

04:38:44 16 THE COURT: Is it that all charged to the
04:38:45 17 Plaintiff?

04:38:46 18 MR. KLINE: I don't -- do you know?

04:38:47 19 THE COURT: Or is that just the total?

04:38:49 20 MS. VALENTI: Excuse me, Your Honor. The
04:38:51 21 Plaintiffs are for 39, 35. 39 minutes, 35 seconds.

04:38:56 22 And for the Defendant, 11 minutes, 57 seconds.

04:39:00 23 THE COURT: Thank you. Let's proceed with the
04:39:02 24 witness by deposition.

04:39:06 25 (Videoclip played.)

04:39:08 1 Q. Good morning, sir. Could you please state your full
04:39:16 2 name for the record?

04:39:17 3 A. Gerald T. Holtzman.

04:39:19 4 Q. And what is your current home address?

04:39:21 5 A. 2 Farrell Ridge Drive, Sugar Land, Texas.

04:39:28 6 Q. And who is your current employer?

04:39:30 7 A. Personalized Media Communications.

04:39:33 8 Q. What is your current position with PMC?

04:39:36 9 A. President.

04:39:38 10 Q. Okay. I just wanted to quickly go through some of your
04:39:41 11 background to start before we get into the other things.

04:39:44 12 It's correct that you have a BA in -- from Rice,
04:39:50 13 and you got that in 1968; is that correct?

04:39:52 14 A. Yes.

04:39:53 15 Q. And what was that degree in?

04:39:55 16 A. Political science.

04:39:57 17 Q. Your next degree is a JD from University of Texas
04:40:02 18 School of Law in 1973?

04:40:04 19 A. Yes.

04:40:04 20 Q. And are you a member of the Texas Bar?

04:40:10 21 A. Yes, but I'm inactive.

04:40:13 22 Q. Okay. Did you become a member of the Texas Bar in
04:40:16 23 1973?

04:40:16 24 A. I did.

04:40:16 25 Q. And when did you maintain active membership in the

04:40:23 1 Texas Bar until?

04:40:24 2 A. 2015.

04:40:25 3 Q. Have you ever been a member of the Patent Bar?

04:40:28 4 A. No.

04:40:29 5 Q. Do you consider yourself an expert in patent law?

04:40:31 6 A. Absolutely not.

04:40:32 7 Q. When you graduated from University of Texas School of

04:40:37 8 Law in 1973, you went to Fulbright & Jaworski; is that

04:40:43 9 correct?

04:40:43 10 A. Yes, sir.

04:40:43 11 Q. You then started up your own firm in 1977; is that

04:40:47 12 correct?

04:40:47 13 A. Yes, sir.

04:40:52 14 Q. And so, then you had your own firm, Holtzman &

04:40:56 15 Urquhart; is that correct?

04:40:57 16 A. Correct.

04:40:57 17 Q. For about 20 years?

04:41:02 18 A. I think that's about right.

04:41:03 19 Q. Did you have any experience with patent licensing when

04:41:06 20 you worked at Holtzman & Urquhart?

04:41:18 21 A. Yes.

04:41:19 22 Q. What was the extent of your work in the area of patent

04:41:21 23 licensing when you were at your own firm, Holtzman &

04:41:27 24 Urquhart?

04:41:27 25 A. In 1995, I was requested by a friend and client to

04:41:31 1 assist them in negotiating or in preparing for a mediation
04:41:40 2 in some patent litigation that they were involved in, in
04:41:45 3 which they were represented by another law firm. And they
04:41:48 4 requested that I assist them in preparing for the mediation
04:41:52 5 and then in negotiating during that mediation in order to
04:41:55 6 resolve their dispute.

04:41:57 7 Q. And so 1995 was your first foray into this area of
04:42:03 8 patent licensing?

04:42:04 9 A. Yes.

04:42:05 10 Q. Who was the friend or client that approached you in
04:42:09 11 1995 to do this?

04:42:10 12 A. The friend was Kazie Metzger, and the client was
04:42:15 13 Personalize -- I think they were called Personalized Mass
04:42:25 14 Media Corporation at the time.

04:42:25 15 Q. Okay. And who was that litigation with that PMMC had
04:42:29 16 in 1995?

04:42:30 17 A. The Weather Channel.

04:42:32 18 Q. And did you successfully negotiate a license between
04:42:38 19 PMMC and The Weather Channel?

04:42:40 20 A. I participated in successfully negotiating the business
04:42:55 21 terms -- the economic business terms of that settlement. I
04:42:57 22 had absolutely nothing to do with negotiating the actual
04:43:00 23 patent license itself.

04:43:02 24 Q. Is it correct that the first time that PMMC or anything
04:43:07 25 that Ms. Metzger or Mr. Harvey were doing became a client

04:43:12 1 of your firm was this 1995 retention for the patent
04:43:17 2 licensing help?

04:43:18 3 A. That's correct.

04:43:18 4 Q. And after the negotiation of the deal with The Weather
04:43:30 5 Channel, did you continue in an ongoing relationship with
04:43:35 6 PMMC or then PMC?

04:43:37 7 A. Not really. Kazie would continue to keep me up-to-date
04:43:54 8 generally on what the company was doing, more in capacity
04:43:56 9 as friends than in any professional capacity.

04:44:00 10 And -- and I think the next time I got involved
04:44:16 11 with them in a business capacity involved discussions that
04:44:21 12 she asked me to participate in that I think were arising in
04:44:28 13 '97 or '98.

04:44:29 14 Q. And what specific conversations were those?

04:44:33 15 A. They had been approached by a company -- they, PMC, had
04:44:43 16 been approached by a company by the name of United Video
04:44:46 17 about the possibility of licensing technology, PMC
04:44:49 18 technology, to -- to United Video.

04:44:56 19 Q. And did you engage in then conversations with United
04:45:02 20 Video on behalf of PMMC?

04:45:04 21 A. Began to, along with Kazie, and John from time to time,
04:45:10 22 but primarily Kazie. By then, I'm pretty certain the
04:45:13 23 company was PMC.

04:45:14 24 Q. In 2014, you ceased being the general counsel of PMC;
04:45:20 25 is that correct?

04:45:20 1 A. I think it was 2014.

04:45:23 2 Q. And that role was handed over to Tom Scott; is that
04:45:27 3 correct?

04:45:28 4 A. I think that's about the correct time.

04:45:30 5 Q. And at that time, you became president of PMC; is that
04:45:36 6 correct?

04:45:36 7 A. That's correct.

04:45:36 8 Q. Has PMC ever made a commercial product?

04:45:44 9 A. Made a commercial product? By that, do you mean
04:45:48 10 responsible for building a product that was sold
04:45:52 11 commercially? No, not to my knowledge.

04:45:55 12 Q. Has PMC ever sold any services?

04:46:00 13 A. No, I don't think so.

04:46:11 14 Q. Can you estimate for me how much money you think you've
04:46:15 15 made via compensation and/or equity interest in PMC?

04:46:23 16 A. I really don't know that I could do that. I mean, it
04:46:33 17 would take me a while.

04:46:35 18 Q. Fair to say it's at least \$10 million?

04:46:38 19 A. No, it hasn't been \$10 million.

04:46:40 20 Q. Has it been at least \$5 million?

04:46:42 21 A. Since day one? I'd be comfortable saying, yeah, it's
04:47:00 22 probably -- that's probably -- I don't -- I don't know, but
04:47:03 23 it's certainly not more than \$5 million.

04:47:08 24 Q. Now, at some point in time, PMC approached Apple about
04:47:16 25 a potential business relationship; is that fair?

04:47:21 1 A. Yes.

04:47:22 2 Q. Whose idea was it at PMC to approach Apple?

04:47:27 3 A. Mine.

04:47:29 4 Q. And why did you decide to reach out to Apple?

04:47:37 5 A. Well, because, as best as I could tell with my limited
04:47:43 6 technical knowledge, it seemed that -- that Apple was
04:47:51 7 engaging in a number of -- of business lines that certainly
04:47:54 8 intersected with our intellectual property, as I understood
04:47:58 9 it, and certainly was demonstrably successful in exploiting
04:48:08 10 those technologies. And seemed to be an appropriate
04:48:13 11 candidate to talk to about our -- our technology.

04:48:21 12 I also believed that -- and read about a number of
04:48:31 13 conflicts going on in the tech business between the Apple
04:48:35 14 platform and, for example, the Google platform, and thought
04:48:41 15 naively that a company such as Apple might be interested --
04:48:46 16 once it learned the nature of the scope of our intellectual
04:48:53 17 property, might be interested in acquiring exclusive rights
04:48:56 18 in certain of our property to supplement whatever rights it
04:48:59 19 may have to enable it to -- to establish bulkheads and
04:49:09 20 beachheads in various of its product lines.

04:49:12 21 Q. Let me show you what I've marked as Exhibit 8, which is
04:49:16 22 PMC-APL_02925142 through 144.

04:49:26 23 A. Yes, sir. Excuse me.

04:49:28 24 Q. And this appears to be an email that you sent in May of
04:49:34 25 2008 to Daniel Cooperman at Apple; is that correct?

04:49:40 1 A. Yes, sir.

04:49:41 2 Q. And is this the first communication you recall having
04:49:45 3 with Apple?

04:49:46 4 A. Yes.

04:49:50 5 Q. Mr. Cooperman, at the time, was the general counsel of
04:49:53 6 Apple?

04:49:53 7 A. Yes.

04:49:54 8 Q. And did you have any prior relationship with
04:49:59 9 Mr. Cooperman prior to this email to him?

04:50:02 10 A. No.

04:50:02 11 Q. And so Mr. Cooperman hadn't asked you to -- to reach
04:50:09 12 out to him? This was you reaching out to Mr. Cooperman,
04:50:14 13 correct?

04:50:14 14 A. I think you might refer to this as a cold call.

04:50:18 15 Q. You can see in the first sentence, it says: I write to
04:50:22 16 present to Apple a potential business transaction involving
04:50:25 17 the acquisition of the intellectual property of PMC.

04:50:28 18 Do you see that?

04:50:29 19 A. I do.

04:50:30 20 Q. Let me mark as Exhibit 9 -- keep that one still
04:50:34 21 handy --

04:50:35 22 A. Okay.

04:50:35 23 Q. -- but Exhibit 9 is going to be Bates No.
04:50:42 24 PMC-APL0_2925145 through 152.

04:50:45 25 So if you -- if you turn to the -- I'm -- I'm

04:50:49 1 still on Exhibit 8, and if you turn to the second page of
04:50:56 2 that email, which is ending Bates No. 143, you can see
04:51:00 3 there's a reference to: I've attached a summary of PMC's
04:51:06 4 portfolio.

04:51:06 5 Do you see that?

04:51:07 6 A. Yes.

04:51:08 7 Q. And then my question for you is -- and it's -- I'm
04:51:16 8 representing to you it's my understanding that the summary
04:51:18 9 of PMC's portfolio that was attached was what we've now
04:51:26 10 marked as Exhibit 9 that is the document that's entitled
04:51:31 11 "PMC - The Company."

04:51:36 12 Is that consistent with your understanding?

04:51:38 13 A. I think that's a reasonable conclusion.

04:51:51 14 Q. Would you character yourself -- characterize
04:51:54 15 yourself as a technical guy or a non-technical guy?

04:51:56 16 A. I am completely a non-technical guy.

04:51:59 17 Q. And how about analyzing the claims of the patents?
04:52:02 18 Have you gotten involved in looking at the claims and
04:52:04 19 figuring out what they cover or don't cover?

04:52:06 20 A. That's not what I do.

04:52:07 21 Q. Fair to say that Apple, in your dealings with them,
04:52:11 22 dealt with you in good faith?

04:52:12 23 A. I have no reason to believe that they did not.

04:52:15 24 Q. And were you the person that was principally directly
04:52:22 25 communicating with Apple on behalf of PMC?

04:52:24 1 A. Yes.

04:52:24 2 Q. You were essentially plugged into all of the
04:52:29 3 communications that PMC had with Apple?

04:52:30 4 A. I believe I was.

04:52:32 5 Q. And when you were communicating with Apple in May in
04:52:37 6 2008, would you have had an understanding as to which of
04:52:40 7 these categories you believed Apple might be using or --
04:52:45 8 and/or have interest in?

04:52:46 9 A. I believed that Apple products involved the sort of
04:52:55 10 stuff on a very unsophisticated basis.

04:53:00 11 You know, I -- I knew, for example, that the
04:53:07 12 iTunes Store would probably be involved with storing --
04:53:10 13 with -- with ratings and billings. I believe that their
04:53:15 14 DRM system would require security decryption and access
04:53:20 15 control.

04:53:21 16 I believed that the smartphone did targeted,
04:53:27 17 personalized advertising because I got it. So that -- that
04:53:32 18 was about as unsophisticated as -- I mean, excuse me, as
04:53:36 19 sophisticated as it got.

04:53:38 20 Q. So you're a --

04:53:39 21 A. No one -- no one ever told me from Apple that your
04:53:44 22 patents don't intersect with our products.

04:53:49 23 Q. And here is Exhibit 10, Bates No. PMC-APL_02430710.

04:54:01 24 You can see Exhibit 10 looks like it's an email
04:54:04 25 from you to Mr. Cooperman dated August 2009, correct?

04:54:09 1 A. Yes, sir.

04:54:11 2 Q. In the third paragraph, the one that starts with the
04:54:15 3 No. 1, you refer to the key elements of the PMC story, and
04:54:19 4 the first one is: A seminal patent position in platform
04:54:24 5 agnostic control and distribution of digital video based
04:54:27 6 upon the interaction of control signals and information
04:54:30 7 maintained at receiver sites, whether television, a
04:54:37 8 computer, or mobile device.

04:54:38 9 A. That's what it says.

04:54:39 10 Q. And when you're talking about platform agnostic
04:54:42 11 control, what do you mean by that?

04:54:43 12 A. Well, platform agnostic control to me means it doesn't
04:54:49 13 matter whether you're talking about television, computers,
04:54:52 14 or mobile phones. Whatever platform this video is
04:54:57 15 delivered over, we believe that the technology relates to
04:55:01 16 it.

04:55:02 17 Q. Sitting here today, are you aware of anything you would
04:55:05 18 have told Apple in these various communications that was
04:55:08 19 just flat out wrong or inaccurate?

04:55:11 20 A. No. And -- and nor -- nor until the very end of our
04:55:15 21 discussions, frankly, that -- did Apple ever suggest to --
04:55:24 22 to me or anybody with me that our patents didn't cover
04:55:26 23 these types of platforms.

04:55:29 24 It was really towards the end of our discussions,
04:55:39 25 really, that I began hearing that management believes

04:55:44 1 that -- that -- that the -- that the licensing people, the
04:55:53 2 out-licensing people -- in-licensing, I'm sorry, people
04:55:56 3 were having difficulty convincing their management that
04:55:59 4 litigators couldn't prove that our patents were reserved to
04:56:07 5 television and not anything else.

04:56:09 6 Q. Let me show what you I've marked as Exhibit 11,
04:56:16 7 PMC-APL_02430711 through 727.

04:56:20 8 A. Okay.

04:56:21 9 Q. And, again, I'm going to ask you to go between
04:56:25 10 exhibits. I apologize. But the email -- August 2009 email
04:56:33 11 indicates that you're: Attaching a current summary of PMC
04:56:37 12 and our IP.

04:56:38 13 And then the question for you is, is what I've
04:56:45 14 marked as Exhibit 11, to the best of your understanding,
04:56:48 15 the attachment that you provide along with the August 2009
04:56:55 16 email?

04:56:56 17 A. I have no reason to believe it's not.

04:56:58 18 Q. When do you first recall receiving a communication back
04:57:04 19 from Apple in response to your inquiries?

04:57:07 20 A. Sometime in 2009, I heard from somebody that
04:57:14 21 Mr. Cooperman referred our -- my letters to -- or my emails
04:57:23 22 to -- I can't give you an exact date. I believe it was
04:57:27 23 2009.

04:57:28 24 Q. Exhibit 12 is going to be PMC-APL_02430664 and 665.

04:57:39 25 You can see Exhibit 12, if you flip to the second

04:57:42 1 page, there's an email Mr. Scott wrote to you saying: I
04:57:50 2 apologize for not getting back to you. I realized,
04:57:53 3 belatedly, it did not have the materials to review. So can
04:57:56 4 you please forward them to me? Thank you.

04:58:00 5 That's in October 2009. Do you see that?

04:58:02 6 A. Yes, sir.

04:58:02 7 Q. And would that have followed some kind of phone or
04:58:05 8 other response from Mr. Scott?

04:58:07 9 A. I'm pretty sure I'd gotten an email from him before
04:58:12 10 then with him telling me that Dan Cooperman had asked him
04:58:15 11 to reach out to me.

04:58:16 12 Q. Okay. And then --

04:58:17 13 A. And I sent him, my belief, materials in response to the
04:58:21 14 reach-out. And this was, all right, I've delayed as long
04:58:30 15 as I can, and now I'm telling you I don't have the
04:58:33 16 materials you sent me. So send them back to me so I can
04:58:38 17 delay once more.

04:58:39 18 Q. Eventually, you then did have a phone conversation with
04:58:44 19 Mr. Scott?

04:58:47 20 A. I had a number of phone conversations with Mr. Scott,
04:58:50 21 yes. Eventually, I did.

04:58:52 22 Q. And what were the nature of those initial phone
04:58:56 23 conversations with Mr. Scott?

04:58:58 24 A. Sort of trying to determine what information would be
04:59:01 25 useful to him. I appreciated the fact that -- that people

04:59:07 1 are very busy and that learning about our portfolio and --
04:59:12 2 and its breadth, in a way, when -- especially when you're
04:59:17 3 cold-calling, is an imposition.

04:59:19 4 So I wanted to be of whatever help I could be
04:59:24 5 in -- in getting him to take an honest look at our stuff.

04:59:29 6 Q. And I'm going to mark as the next in order, lucky
04:59:36 7 number 13, is APLPMC00008679 through 8686.

04:59:46 8 You can see this is an email from you to Mr. Scott
04:59:51 9 at Apple dated October 30, 2009; is that correct?

04:59:57 10 A. Yes, sir.

04:59:57 11 Q. And it contains a series of attachments relating to
05:00:03 12 various information regarding PMC patents, patent
05:00:09 13 applications, and/or decisions relating to those?

05:00:12 14 A. Yes, sir.

05:00:12 15 Q. And was this specific information that Mr. Scott had
05:00:18 16 requested, or was this information selected by you to help
05:00:22 17 provide more context as to PMC's intellectual property?

05:00:25 18 A. Probably both. I think I may have been responding
05:00:30 19 to -- no, that's just pure speculation. I'm guessing based
05:00:37 20 on memory that may be faulty. So probably -- I know it was
05:00:40 21 a result of both. He asked for certain things, and I
05:00:43 22 thought there were certain things he should see.

05:00:45 23 Q. Now, at this time, again, it was more general
05:00:53 24 information regarding PMC's patents and portfolio as
05:00:56 25 opposed to any specific assertion that Apple -- specific

05:01:01 1 Apple technology was using the patents; is that fair?

05:01:10 2 A. Well, I -- I -- yeah, that's -- I think that's fair. I
05:01:14 3 think by this time -- I know I had conversations with Ed
05:01:21 4 about there wasn't any need for us to make a formal
05:01:24 5 assertion because our goal wasn't to sue the company. Our
05:01:28 6 goal was to try to make a deal with the company.

05:01:32 7 And nor was there ever anything communicated to
05:01:41 8 me, by Ed or anyone else at Apple, that indicated to me
05:01:46 9 that Apple took the position that -- that it operated clear
05:01:52 10 of the patents. It was just not something we discussed.

05:01:55 11 Apple was always interested in the technology,
05:02:00 12 always interested in trying to -- to reach a deal with us.
05:02:04 13 We remained, of course, interested in trying to reach a
05:02:08 14 deal with Apple. So it wasn't confrontational in any way,
05:02:14 15 the relationship. Certainly with Ed and -- well, with
05:02:16 16 everybody, as I think you'll see from -- if I remember all
05:02:19 17 of our correspondence well.

05:02:23 18 Q. When you were sending stuff to Apple, both in 2009 and
05:02:26 19 then through the years subsequent to that, did you have the
05:02:30 20 sense that Apple was reviewing the information that you
05:02:32 21 sent and giving it due consideration?

05:02:37 22 A. I have the feeling that for a period of time, for as
05:02:40 23 long as they could, Apple's primary goal was to make it
05:02:43 24 take as long as possible, discussions, drag them on as long
05:02:47 25 as possible, so long as I didn't indicate to them that I

05:02:55 1 was going to allow that to happen. And for a while, I
05:02:59 2 didn't ever indicate that that was a problem for us.

05:03:02 3 Frankly, I wrote Mr. Cooperman two years before we
05:03:06 4 even had new patents issue. Again, naively thinking that
05:03:15 5 if, in fact, Apple was interested in doing something
05:03:18 6 creative with us, that it might want to have a hand in
05:03:24 7 looking at what was being prosecuted.

05:03:26 8 So when I first reached out to Apple, these 90
05:03:34 9 patents that have issued since 2010, were still in front of
05:03:41 10 the Patent Office.

05:03:42 11 So, no, I can hardly expect somebody to enter into
05:03:47 12 a deal based on unpublished applications. They weren't
05:03:51 13 even -- they weren't even published because of the date of
05:03:53 14 filing.

05:03:54 15 Q. Did you ever share any of the -- the unpublished,
05:03:59 16 still-non-public applications with Apple as part of these
05:04:04 17 conversations?

05:04:04 18 A. Oh, I think I did. And when I say to you that -- that
05:04:08 19 I provided confidential information to Apple, I believe
05:04:15 20 that would be of the nature of the type of information I
05:04:18 21 provided because an unpublished application is, in fact,
05:04:22 22 confidential information. So that's -- that's what I think
05:04:24 23 I was talking about.

05:04:26 24 Q. Okay. I've marked as Exhibit 14 APL-PMC_00008991
05:04:38 25 through 9001.

05:04:40 1 I believe this is one of the attachments that you
05:04:42 2 included in the October 30, 2009, email to Mr. Scott at
05:04:47 3 Apple.

05:04:47 4 Do you have any reason to believe that that's
05:04:51 5 incorrect?

05:04:55 6 A. No, I don't.

05:04:55 7 Q. And would this just be a further evolution of the sort
05:05:03 8 of PMC overview document that we previously saw attached to
05:05:10 9 prior emails that you had sent to Apple?

05:05:13 10 A. Well, it's certainly different, and I think it's trying
05:05:18 11 to provide a different type of information to Apple than we
05:05:24 12 had provided before. This is less about the technical
05:05:27 13 elements of the -- of the portfolio than a certain
05:05:35 14 valuation type of -- not valuation in dollars and cents,
05:05:41 15 but valuation of the portfolio information that I thought
05:05:44 16 could be useful to Ed.

05:05:45 17 Q. So when PMC did identify specific patents to Apple with
05:05:49 18 specific claims of infringement, you would agree with me
05:05:51 19 that Apple responded and said, no, we think we don't
05:05:56 20 infringe those patents, and here's why?

05:06:00 21 A. I think Apple responded with its claim charts or its
05:06:06 22 explanation of why they believed that our assertion was
05:06:09 23 incorrect.

05:06:11 24 Q. And so you agree that in these original meetings or --
05:06:18 25 or conversations and then meetings between PMC and Apple,

05:06:21 1 PMC did not identify specific patents to Apple as ones that
05:06:27 2 they thought that Apple might be infringing?

05:06:30 3 A. We did not provide -- I'll try with my limited
05:06:37 4 technical -- we did not provide -- try to provide any
05:06:42 5 evidence that Apple was using a particular patent in any
05:06:51 6 particular infringing sort of way. Rather, what we were
05:06:54 7 trying to do was to explain the -- the PMC patent portfolio
05:06:58 8 and allow Apple to make its own conclusions.

05:07:02 9 Q. And then later on, you know, as the conversations
05:07:07 10 developed over the years, there did come a point in time
05:07:10 11 when PMC did identify specific patents, provided claim
05:07:15 12 charts for Apple to consider whether they might be
05:07:20 13 infringing?

05:07:20 14 A. In response to a specific request to do so, yes.

05:07:23 15 Q. And then in response to PMC doing that, identifying
05:07:28 16 specific patents and how they might be infringed, then
05:07:32 17 Apple responded with specifics as to why they thought they
05:07:37 18 didn't infringe; is that --

05:07:39 19 A. I think that's fair.

05:07:40 20 Q. Let me mark as Exhibit 15 what's Bates numbered
05:07:48 21 PMC-APL_01613678 through 704.

05:07:53 22 Mr. Holtzman, you can see this looks like this is
05:07:57 23 a set of maybe PowerPoint or some kind of other slides that
05:08:03 24 you and Mr. Lemna presented at a meeting with Apple in
05:08:08 25 April 2010; is that correct?

05:08:10 1 A. Yes.

05:08:17 2 Q. Do you recall who attended the meeting other than
05:08:19 3 yourself and Mr. Lemna?

05:08:20 4 A. Yes.

05:08:20 5 Q. Who did?

05:08:21 6 A. Mr. Scott and Boris Teksler, T-e-k-s-l-e-r.

05:08:32 7 Q. And you recall Mr. Teksler was involved in the
05:08:35 8 licensing part of Apple?

05:08:36 9 A. To my understanding, he directed it.

05:08:39 10 Q. And you can flip through the presentation to confirm
05:08:51 11 this. But is it fair to say that in this presentation, you
05:08:54 12 were more giving a general presentation regarding PMC's
05:08:58 13 portfolio to -- rather than providing specific notice to
05:09:04 14 Apple of infringement or potential infringement of certain
05:09:07 15 patents?

05:09:10 16 A. You know, it's funny. I don't want to sound like an
05:09:14 17 idiot, that -- that I just was willing to just never come
05:09:24 18 to grips with what was really going on here. But at this
05:09:29 19 juncture, I still had reason to believe from things that
05:09:33 20 Scott was telling me that Apple still had an interest in
05:09:36 21 talking with us about acquiring exclusive rights in our
05:09:43 22 technology to assist them in whatever way they thought they
05:09:47 23 might be assisted.

05:09:50 24 Because, for example, you'll see in the back, you
05:09:55 25 know, they had -- Ed had asked us: Give us some idea of

05:09:59 1 who you think is covered by this stuff.

05:10:02 2 Now, you'll see everybody and their mother except
05:10:07 3 for Apple, okay? Wasn't any reason to put Apple. There
05:10:13 4 was an assumption that we believed that Apple was
05:10:18 5 implicated by our technology.

05:10:20 6 But I was led to believe that they were still
05:10:26 7 interested in discussing a proactive business use for
05:10:30 8 the -- for the patents beyond simply licensing them for
05:10:35 9 their own use. And our discussions were directed in
05:10:41 10 that -- in that vein.

05:10:45 11 Q. And so your recollection of the April 2010 meeting with
05:10:51 12 Mr. Holtzman and Lemna -- or, sorry, with Mr. Teksler and
05:10:56 13 Scott was that they might -- Apple might be considering
05:11:01 14 acquisition of -- or license -- exclusive licensing of
05:11:06 15 certain PMC technology to potentially assert against
05:11:08 16 others?

05:11:09 17 A. That's what I thought, among what I thought. I thought
05:11:12 18 they were interested in -- in protecting their own use, and
05:11:19 19 to the extent that they felt it was useful, to be able to
05:11:24 20 use it for whatever other purposes they wanted to. I
05:11:27 21 didn't care.

05:11:28 22 Q. So, yeah, I'm just kind of saying, where did it go from
05:11:33 23 here? You came out there. You gave a presentation. This
05:11:36 24 is the first in-person meeting you're having. Mr. Teksler
05:11:40 25 is involved. Where does it go from there?

05:11:42 1 A. My recollection, and it is recollection, is that they
05:11:45 2 had asked for additional information, which we provided,
05:11:49 3 and then I think there was a -- a period of time that Ed
05:11:59 4 sort of disappeared, and I pinged him from time to time.
05:12:08 5 And I think that, subsequently, a -- another meeting was
05:12:13 6 held with Ed where I got him together with Tom Scott, and I
05:12:19 7 think it was in Washington, to have further discussions
05:12:24 8 about the portfolio.

05:12:25 9 It was at this time, to be candid with you, that I
05:12:35 10 really began to believe that Apple was just trying to put
05:12:38 11 it into the deep freeze, and -- just my personal sense.

05:12:51 12 And I do remember, if I'm correct about that
05:12:53 13 meeting in Washington, and I believe I am, that I -- I
05:12:58 14 continued to press Mr. Scott for some -- Ed Scott, Apple's
05:13:05 15 Mr. Scott -- about some sort of status update when he
05:13:16 16 informed -- either he informed us or a fellow at Apple
05:13:21 17 informed us that we'd been passed along to him for further
05:13:25 18 handling.

05:13:27 19 Q. And who were you passed along to?

05:13:32 20 A. Pat Murphy.

05:13:34 21 Q. I'm going to mark as Exhibit 16 an email that's Bates
05:13:40 22 numbered PMC-APL_02430086.

05:13:46 23 You can see this is an email dated April 12th,
05:13:49 24 2010, from you to Mr. Scott and Mr. Teksler, correct?

05:13:56 25 A. Yes.

05:13:56 1 Q. And is there a reason why you sent this email that's
05:13:58 2 apparently clarifying what is meant when the PMC portfolio
05:14:08 3 speaks of transmitted control signals?

05:14:10 4 A. Well, my recollection is clear that it was sent in
05:14:14 5 response to questions that they raised during our meeting.

05:14:19 6 Q. I've marked a couple of exhibits here. Exhibit 17 is
05:14:25 7 Bates numbered APLPMC00009243. And then Exhibit 18 is
05:14:34 8 APLPMC00009244.

05:14:38 9 We'll start with 17.

05:14:42 10 Mr. Holtzman, this appears to be an email from you
05:14:47 11 to Mr. Scott, cc'ing Mr. Teksler, dated January 2011,
05:14:55 12 correct?

05:14:55 13 A. Yes.

05:14:56 14 Q. And as part of this January 2011 communication, you
05:15:06 15 attach a draft of a potential term sheet; is that correct?

05:15:11 16 A. Yes.

05:15:14 17 Q. And the term sheet that you attached is what we've
05:15:20 18 marked as Exhibit 18; is that correct?

05:15:22 19 A. Yes.

05:15:23 20 Q. Now, is this the first term sheet or any kind of demand
05:15:29 21 or offer that PMC provided to Apple?

05:15:34 22 A. Well, certainly the first term sheet, although my
05:15:40 23 recollection is that Ed and I would have talked about
05:15:44 24 numbers prior to this time, but never for the term that's
05:15:49 25 contained in the -- in the term sheet, never for the

05:15:55 1 temporal term contained in the term sheet.

05:15:57 2 Q. Do you recall any written draft agreement or term sheet
05:16:01 3 provided to Apple prior to what you sent here in January
05:16:06 4 2011?

05:16:06 5 A. I don't recall one.

05:16:09 6 Q. And that would be a portfolio-wide license to all of
05:16:13 7 PMC's patents and any pending patent applications?

05:16:18 8 A. That would have been the intent.

05:16:19 9 Q. Have all of PMC's licensing deals all been
05:16:25 10 portfolio-wide licenses?

05:16:27 11 A. I think so.

05:16:38 12 Q. Has anyone specifically called out particular patents,
05:16:44 13 anyone you've ever negotiated with, to take licenses to
05:16:48 14 particular patents as opposed to others?

05:16:52 15 A. No.

05:16:53 16 Q. And that is consistent with my next exhibit. So let's
05:16:54 17 mark that as Exhibit 19.

05:16:54 18 A. That's good. I was right.

05:16:56 19 Q. It's PMC-APL_02926553 through 6555.

05:17:03 20 You can see here that this is an email -- I guess
05:17:14 21 you emailed it to yourself, but the lower email is an email
05:17:18 22 from yourself to Mr. Murphy dated July 19th, 2011,
05:17:23 23 correct --

05:17:23 24 A. Yes.

05:17:23 25 Q. -- and so somewhere in between the last communication

05:17:27 1 we looked at in January of 2011 and then July 2011, you
05:17:32 2 were transitioned to speaking with Mr. Murphy; is that
05:17:38 3 correct?

05:17:38 4 A. That's my understanding.

05:17:39 5 Q. You could see here it says: Hello, Patrick. Further
05:17:45 6 to our licensing discussions, and as you have requested, we
05:17:49 7 have completed five claim charts to provide Apple with
05:17:52 8 insight regarding how Apple products and services use the
05:17:55 9 PMC portfolio.

05:17:55 10 Do you see that?

05:17:56 11 A. Yes.

05:17:57 12 Q. And so in 2011, Apple requested PMC to identify some
05:18:03 13 specifics as to particular patents and how they might be
05:18:10 14 used by Apple's technology; is that correct?

05:18:12 15 A. That's what it says.

05:18:13 16 Q. And is that consistent with your recollection?

05:18:15 17 A. It is.

05:18:16 18 Q. And then PMC complied with Apple's request and provided
05:18:24 19 five claim charts mapping five of PMC's patents against
05:18:28 20 Apple's technology, correct?

05:18:31 21 A. Not all of Apple's technology. Certain aspects of it
05:18:35 22 is my understanding.

05:18:37 23 Q. Now, eventually there was a meeting had where PMC and
05:18:44 24 Apple sat down and discussed the claim charts and the five
05:18:49 25 patents that PMC had identified to Apple?

05:18:52 1 A. There was.

05:18:52 2 Q. And is it correct that at the meeting, Apple provided a
05:18:58 3 presentation of their own in response to the five claim
05:19:02 4 charts that PMC had provided?

05:19:04 5 A. Yes.

05:19:04 6 Q. Let's mark as Exhibit 25 what's Bates numbered
05:19:12 7 PMC-APL_02926470 through 499.

05:19:18 8 You certainly remember Apple making a presentation
05:19:21 9 to PMC on or about November 2011 and you believe -- or have
05:19:27 10 no reason to believe that what I've marked here as
05:19:29 11 Exhibit 25 is not that presentation?

05:19:31 12 A. That's correct.

05:19:32 13 Q. If we turn the page, it's the third slide ending Bates
05:19:38 14 No. 6472, you can see at the top it's entitled General
05:19:46 15 Issues, just to make sure we're on the same page.

05:19:49 16 And the first bullet there, it says: PMC's
05:19:53 17 infringement contentions are based on information that does
05:19:55 18 not accurately describe the operation of Apple's products.

05:19:58 19 Do you see that?

05:19:59 20 A. That's what it says.

05:20:01 21 Q. And do you remember Apple sending the message back to
05:20:04 22 PMC saying that PMC's claim charts were not based on
05:20:08 23 accurate information as to how Apple's products worked?

05:20:11 24 A. I don't know what -- I don't remember exactly what they
05:20:14 25 said. These issues were raised during that meeting. I

05:20:19 1 don't know how they said it or what words they used.

05:20:24 2 Q. Then without belaboring the details of it, you know,
05:20:28 3 Apple did give you a -- a, you know, 30-page presentation
05:20:34 4 detailing specifics as to why they thought they didn't
05:20:38 5 infringe, and the patents were invalid, correct?

05:20:40 6 A. They gave me what has been marked as Exhibit 25, which,
05:20:46 7 you know, I found to be -- yeah, I mean, they gave me
05:20:51 8 Exhibit 25.

05:20:51 9 Q. I mean, sometimes when you're in these licensing
05:20:54 10 discussions, people tell you, we don't infringe, and we
05:20:57 11 think the patents are invalid. But they don't back it up
05:21:01 12 with anything?

05:21:01 13 A. They don't hand me 25 pages.

05:21:04 14 Q. Now, you understand that none of the five patents that
05:21:08 15 were identified to Apple in the pre-lawsuit discussions
05:21:10 16 were included in the actual lawsuit that was filed against
05:21:13 17 Apple; is that right?

05:21:14 18 A. I guess I didn't know that.

05:21:19 19 Q. So my next question is, do you have an explanation as
05:21:22 20 to why, when PMC decided to sue Apple, it did not sue Apple
05:21:29 21 on any of the five patents it had focused on in the
05:21:33 22 pre-suit discussions?

05:21:34 23 A. I can only speculate.

05:21:38 24 Q. Okay. So there's this period of relative quiet
05:21:41 25 starting in later 2011, extending for a year or two, you

05:21:45 1 said, and then you said Jayna Whitt at Apple became the
05:21:51 2 point of contact that you had?

05:21:54 3 A. Correct.

05:21:55 4 Q. Did you ever have any in-person meeting meetings with
05:21:59 5 Ms. Whitt?

05:21:59 6 A. I did.

05:22:00 7 Q. How many?

05:22:01 8 A. Two, I believe.

05:22:02 9 Q. And the first meeting that you recall having with
05:22:07 10 Ms. Whitt, who else was present?

05:22:10 11 A. Heather Mewes, M-e-w-e-s, and a summer clerk, an intern
05:22:22 12 who was at law school at -- I think at Berkeley.

05:22:25 13 Q. And what was discussed at this meeting -- this first
05:22:29 14 meeting that you had with Ms. Whitt, Ms. Mewes, and the
05:22:33 15 intern?

05:22:35 16 A. Went back through the history with Patrick, and -- and,
05:22:41 17 you know, basically, they made it clear that Apple had a
05:22:48 18 continued interest or continuing interest in trying to get
05:22:51 19 a deal with us, and how were we going to go about coming up
05:22:56 20 with numbers that we could all live with.

05:22:58 21 Q. Were there any more claim charts or specifics that --
05:23:03 22 specific patents identified by PMC to Apple when you were
05:23:06 23 talking to Ms. Whitt?

05:23:07 24 A. No. The only time I ever heard -- to make it easier
05:23:14 25 for you, the only time I ever heard that our patents were

05:23:17 1 invalid and not infringed was in that meeting with Pat
05:23:20 2 Murphy.

05:23:21 3 Q. Yeah. And my question was more going at: Did you ever
05:23:24 4 come back to Apple after the meeting with Mr. Murphy --

05:23:28 5 A. Oh, okay.

05:23:29 6 Q. -- to say, hey, here's another set of patents for you
05:23:32 7 guys to take a look at?

05:23:33 8 A. No, sir.

05:23:34 9 Q. Let me mark as Exhibit 27 what's Bates-numbered
05:23:39 10 PMC-APL_03354070 through 072.

05:23:45 11 You can see Exhibit 27 is an email you sent to
05:23:57 12 Jayna Whitt at Apple, cc to Heather Mewes, dated
05:24:02 13 October 22, 2013, correct?

05:24:03 14 A. Yes, sir.

05:24:04 15 Q. The second line says: Reflecting on our discussions
05:24:09 16 and suspecting that our differences in valuation may stem
05:24:12 17 from your sense that our patents are focused in the
05:24:14 18 television and not the Internet space. I offer this
05:24:17 19 additional information for you and others to consider when
05:24:20 20 considering the relevance of the PMC/Harvey patents.

05:24:25 21 Do you see that?

05:24:26 22 A. Yeah, I see it.

05:24:27 23 Q. And so by this time, Apple was communicating to you the
05:24:32 24 notion that the patents were focused on television and not
05:24:36 25 the Internet space; is that fair?

05:24:39 1 A. Jayna had made it clear that her management, in terms
05:24:49 2 of discussing valuation, believed that the focus of the
05:24:53 3 patents was more on television than as to the Apple
05:24:57 4 patent -- products.

05:24:58 5 Q. So I'm -- I'm looking still at the communication you
05:25:01 6 had with Ms. Whitt in October 2013. This is Exhibit 27.
05:25:09 7 And you give her a long set of reasons why -- and -- and
05:25:16 8 you conclude at the end of the email, looking at Page 3 of
05:25:19 9 the email, with the conclusion: We are relevant to Apple's
05:25:25 10 Internet business.

05:25:25 11 And, essentially, the substance of this email is
05:25:27 12 trying to make that point to her. Is that a fair
05:25:31 13 characterization of what you were trying to accomplish via
05:25:34 14 this communication to Ms. Whitt?

05:25:36 15 A. I think the letter speaks for itself.

05:25:38 16 It's very clear that we believe the patent's
05:25:42 17 relevant -- our patent's relevance to the Internet.

05:25:46 18 Q. You think Apple is sort of a different animal compared
05:25:52 19 to the other people you've licensed in the past?

05:25:55 20 A. I think Apple is unique.

05:25:57 21 Q. Unique in what way?

05:25:59 22 A. Unique as to scale. Unique in that sense.

05:26:06 23 Q. So we talked about the first meeting that you had with
05:26:09 24 Ms. Whitt and Ms. Mewes. You said there was a second
05:26:12 25 meeting?

05:26:14 1 A. Yeah, there was. And --

05:26:15 2 Q. Who attended that one?

05:26:17 3 A. I -- I think it was Heather, and that Jayna couldn't
05:26:22 4 make it, so I wound up meeting with just Heather.

05:26:26 5 Q. And what was the nature of that discussion with
05:26:28 6 Ms. Mewes?

05:26:29 7 A. Just we couldn't get anywhere. You know, I had made a
05:26:35 8 number of offers of -- of trying to find creative ways to
05:26:38 9 structure something that could be paid -- you know, pay us
05:26:43 10 something and then, you know, if something happens, then
05:26:47 11 you pay more or -- you know, and so forth. And we just
05:26:50 12 talked it around and talked it around and talked it around.

05:26:54 13 And at the end of the day, you know, Jayna -- I
05:26:59 14 mean, Heather was just honest enough to -- to say that we
05:27:02 15 just have a -- a management dispute as to how valuable your
05:27:05 16 patents are to us. We believe they're valuable to us.
05:27:09 17 They're just nowhere near as valuable as you think they
05:27:13 18 are. And I understand that.

05:27:14 19 So there we are with what I consider to be a
05:27:20 20 legitimate business dispute. And, unfortunately, today, in
05:27:26 21 this world, there seems to be only way to resolve those.

05:27:32 22 Q. Now, in all these conversations with Ms. Mewes and
05:27:35 23 Ms. Whitt, it sounds like you had pivoted away from talking
05:27:40 24 about specific patents or positions or defenses and you
05:27:43 25 were more focused on potential business terms; is that

1 fair?

05:27:48 2 A. So were they. Yeah. It was never -- you know, it was
05:27:53 3 never -- it was never a focus on the -- I'm going to make
05:27:57 4 up -- in the '304 patent or -- or a focus on a claim chart
05:28:02 5 or a focus on a 112 defense. It was on a, here's what this
05:28:08 6 stuff we think is worth to us.

05:28:10 7 And for Apple, that needs to be as low as
05:28:13 8 possible, and for me, that needs to be as high as possible,
05:28:16 9 and we just weren't able to reach an understanding.

05:28:20 10 Q. Exhibit 29 will be Apple's first Notice of Deposition
05:28:24 11 of Personalized Media Communications pursuant to 30 --
05:28:28 12 Federal Rules of Civil Procedure 30(b)(6).

05:28:33 13 So, Mr. Holtzman, I think you were identified for
05:28:38 14 one topic in this 30(b)(6) notice, and I wanted to just
05:28:42 15 point you to it quickly if you could grab it. Topic 15.
05:28:53 16 It's on Page 7. I'll read it to you.

05:28:56 17 The topic is PMC's policies, practices, and/or
05:29:01 18 customs for assessing the royalty payment agreed to and
05:29:05 19 received, compared to the expected and/or forecasted
05:29:08 20 royalty payment and any assessments of equivalent value if
05:29:12 21 the form of royalty payment changed, i.e., PMC's forecast
05:29:16 22 in per-unit royalty compared to the agreed-upon lump sum
05:29:25 23 royalty payment.

05:29:25 24 Do you see that topic now?

05:29:26 25 A. I do.

05:29:27 1 Q. And do you understand that you've been identified by
05:29:30 2 PMC as the person from PMC to testify on behalf of the
05:29:32 3 company for this topic?

05:29:34 4 A. I understand that I was designated to testify about
05:29:37 5 that matter post-2001.

05:29:40 6 Q. Do you agree that the proper way to look at valuing
05:29:45 7 any, you know, license that Apple might take would be to
05:29:47 8 look at it from a lump sum perspective as opposed to a
05:29:51 9 royalty perspective?

05:29:52 10 A. Technically not, but that's the way people have dealt
05:29:55 11 business with us. You know, we -- we haven't negotiated
05:30:00 12 lump sum royalties. I mean, we haven't negotiated unit
05:30:05 13 royalties. We've negotiated lump sum payments.

05:30:09 14 Q. I think you've previously testified -- I've seen a
05:30:13 15 transcript where you've said 99 percent of PMC's licenses
05:30:16 16 have been of the lump sum variety as opposed to ongoing
05:30:20 17 royalty; is that correct?

05:30:24 18 A. Yeah.

05:30:25 19 ATTORNEY: You have to answer. Okay.

05:30:26 20 A. Yes.

05:30:27 21 Q. In the past 20 years, all the licenses that PMC has
05:30:30 22 done have been lump sum licenses?

05:30:33 23 A. To my knowledge.

05:30:34 24 Q. Has Apple communicated to you that their typical
05:30:39 25 practice is to negotiate lump sum as opposed to ongoing

05:30:42 1 royalty agreements?

05:30:44 2 A. Well, you know, the only -- the only knowledge I have
05:30:48 3 about that is -- is I think I heard that from either
05:30:54 4 Heather or Jayna, and I certainly heard that from David
05:31:01 5 Melaugh at mediation.

05:31:03 6 Q. Are you aware of any license that PMC has that was
05:31:09 7 specifically driven or -- or consummated because of the --
05:31:19 8 the parties seeking rights to the patents that are asserted
05:31:21 9 in this case?

05:31:22 10 A. No. Because everybody that talks to us knows we're
05:31:27 11 talking about a portfolio license.

05:31:28 12 Q. Right. So --

05:31:29 13 A. We've never really divvied out patents.

05:31:33 14 (Videoclip ends.)

05:31:33 15 THE COURT: Does that complete this witness by
05:31:38 16 deposition?

05:31:39 17 MR. KLINE: It does, Your Honor.

05:31:40 18 THE COURT: Call your next witness.

05:31:43 19 MR. KLINE: PMC calls Heather Mewes by
05:31:49 20 deposition -- I mean, by designation, Your Honor.

05:31:51 21 Would you like the allocations?

05:31:53 22 THE COURT: Yes, please.

05:31:53 23 MR. KLINE: The Plaintiff has allocated 7 minutes
05:31:57 24 and 23 seconds. The Defendant has allocated 9 minutes and
05:32:01 25 24 seconds.

05:32:02 1 THE COURT: Proceed with this witness by
05:32:03 2 deposition.

05:32:04 3 (Videoclip played.)

05:32:13 4 Q. Could you please identify yourself for the record?

05:32:17 5 A. Heather Mewes.

05:32:17 6 Q. And could you please state your address?

05:32:19 7 A. I'm at 698 Orvis Avenue in San Jose, California.

05:32:25 8 Q. And you have a law degree as well, correct?

05:32:27 9 A. I do.

05:32:28 10 Q. And where is that from?

05:32:29 11 A. That's from the University of California at Berkley.

05:32:32 12 Q. And what was your first title at Apple?

13 A. I was senior counsel.

05:32:34 14 Q. What were your responsibilities in that position?

05:32:35 15 A. They varied. So I was in a licensing practice,

05:32:38 16 licensing group, but that could involve matters like

05:32:47 17 parties coming to us and asking us to take a license. It

05:32:51 18 could involve IP advice generally in a variety of areas.

05:32:58 19 Q. When you started at Apple as a senior counsel, what was
05:33:00 20 the specific name of the group that you worked for?

05:33:02 21 A. IP transactions.

05:33:04 22 Q. And was that part of the broader structure of the
05:33:08 23 general counsel's office at Apple?

05:33:11 24 A. So -- I'm sorry. The IP transactions group actually
05:33:15 25 sits in the licensing -- licensing group.

05:33:17 1 Q. And does the IP and licensing group sit within some
05:33:20 2 broader group or office?

05:33:22 3 A. Within the general counsel.

05:33:24 4 Q. So I know you said that there was a reorganization at
05:33:28 5 some point, but back when you started as a senior counsel
05:33:34 6 in 2012, did the IP transactions group handle licensing
05:33:39 7 negotiations?

05:33:40 8 A. Yes.

05:33:41 9 Q. Were you personally involved in licensing negotiations?

05:33:46 10 A. Yes.

05:33:46 11 Q. Would Apple look into the status of any pending
05:33:53 12 applications as it was evaluating whether or not to
05:33:55 13 purchase an asset?

05:33:56 14 A. So it might. I mean, I think we generally rely on
05:34:01 15 information that's provided to us.

05:34:02 16 Q. So as a general practice, Apple wouldn't say, go to the
05:34:08 17 USPTO website and pull whatever relevant information they
05:34:11 18 could find on the patent application?

05:34:13 19 A. If we were going to complete an acquisition, we'd
05:34:16 20 probably check that. But we certainly don't expect parties
05:34:20 21 to be dealing unfairly with us and sharing false
05:34:24 22 information.

05:34:24 23 Q. When a letter patentholder comes into Apple accusing
05:34:32 24 Apple for infringement, how is that generally handled?

05:34:36 25 A. So that kind of letter would come to the IP

05:34:39 1 transactions team. Somebody on our team would take
05:34:43 2 leadership on it. We would look at the letter. In some
05:34:46 3 cases, things come to us, for example, as I mentioned
05:34:49 4 earlier, with pretty detailed information, like claim
05:34:53 5 charts and things that. In that case, we might just let
05:34:56 6 the party know we're evaluating it and go ahead and do our
7 evaluation.

05:35:00 8 In some cases, things come to us with -- with very
05:35:03 9 little information, just a patent number or something like
05:35:05 10 that. And so we might write to the party and say, could
05:35:08 11 you please provide some more information so we can
05:35:12 12 understand why you think this is relevant to us.

05:35:13 13 Q. Is there a practice about how such a letter would be
05:35:16 14 handled?

05:35:16 15 A. Yeah. So I said as -- generally, when a letter comes
05:35:20 16 in with some kind of assertion that Apple is infringing a
05:35:23 17 patent, it's something -- we respect the intellectual
05:35:25 18 property of third parties, and so we take it very
05:35:29 19 seriously.

05:35:30 20 And what that means is we do investigate each one
05:35:33 21 of these letters that comes to us. Like I said, we --
05:35:36 22 we'll write back. We will ask for information. We will
05:35:38 23 work with our engineers, with outside counsel, with experts
05:35:44 24 to make sure we understand the allegations, and we'll have
05:35:48 25 a dialog.

05:35:50 1 We try to provide written feedback to parties who
05:35:56 2 come to us with serious allegations and provide an
05:35:59 3 explanation of our view. And some cases we'll have a
05:36:06 4 dialog about taking a license and what the value of that
05:36:09 5 license is, and, you know, we'll -- in some cases we're
05:36:13 6 able to reach agreement and in some cases we're not.

05:36:16 7 Q. And who is Mr. Scott?

05:36:17 8 A. So he's an attorney that was no longer at Apple but was
05:36:20 9 in the licensing and strategy group previously.

05:36:24 10 Q. Do you know if Apple ever does clearance searches?

05:36:27 11 A. I'm not aware of any. I mean, it's something we would
05:36:31 12 consider if it makes sense in a particular circumstance,
05:36:33 13 but it's certainly not a policy to do clearance searches
05:36:37 14 because we've generally made the evaluation that they don't
05:36:40 15 make sense.

05:36:41 16 Q. Whether Apple receives communications from a
05:36:45 17 patentholder seeking to sell its intellectual property to
05:36:50 18 Apple, does Apple attempt to determine -- determine the
05:36:54 19 scope of that -- those patents?

05:36:55 20 A. I mean, we would certainly look at the disclosure in
05:37:01 21 the patents to understand what's there. I'm not sure our
05:37:05 22 focus would be on claims necessarily. I think we'd look at
05:37:10 23 some of that, especially if there's applications open, I
05:37:14 24 think the focus would not be on claims.

05:37:17 25 Q. What would it be on?

05:37:19 1 A. Well, in an acquisition context, and particularly if
05:37:22 2 you have an opportunity to continue prosecuting patents,
05:37:27 3 you might be focused on what's actually disclosed in the
05:37:30 4 specification so you can understand what might be supported
05:37:32 5 in the future.

05:37:33 6 Q. So Apple would focus on the specification more than the
05:37:41 7 claims?

05:37:41 8 A. It's more likely in an acquisition context but, again,
05:37:45 9 it depends on the circumstance. And like I said, it may be
05:37:50 10 that you're in an area that we're just not interested in
05:37:52 11 buying it in so we might not get that far.

05:37:55 12 Q. The court reporter has handed you Exhibit 9 marked with
05:37:59 13 the Bates number APL-PMC_00002989.

05:38:05 14 All right. Have you seen this document before?

05:38:06 15 A. I don't recall it specifically, but I may have.

05:38:09 16 Q. When you became responsible for this matter, did you go
05:38:14 17 back and look at correspondence between Apple and PMC?

05:38:19 18 A. Yes.

05:38:19 19 Q. Why?

05:38:19 20 A. Because I want to be familiar with the history between
05:38:22 21 the parties.

05:38:23 22 Q. Turning back to the document in front of you, the email
05:38:26 23 from Mr. Scott states: You're right. I've described
05:38:32 24 several pending patent applications, but I've not received
05:38:34 25 any details. How do I get this information?

05:38:36 1 Did I read that correctly?

05:38:38 2 A. Certainly the gist of it. I wasn't paying attention
05:38:43 3 word-for-word.

05:38:45 4 Q. Do you know why Mr. Scott would have wanted the
05:38:51 5 information regarding the pending patent applications?

05:38:53 6 A. So as I said, we'd be interested primarily, I think, in
05:38:57 7 the disclosures of those applications.

05:38:59 8 Q. This email is dated October 29th, 2009, correct?

05:39:05 9 A. Yes.

05:39:06 10 Q. Would Apple have considered these communications to be
05:39:13 11 a negotiation?

05:39:14 12 A. So it's -- Mr. Holtzman is trying to sell his IP to
05:39:20 13 Apple, so it's a negotiation in the sense that he would
05:39:23 14 like a transaction to happen. Like I said, you know,
05:39:27 15 the -- I don't see anything in here to indicate that we
05:39:32 16 expressed interest in purchasing, so I'm not sure it's --
05:39:35 17 it's a negotiation in the sense of, hey, you want this
05:39:40 18 price, and I want that price. But there's an exchange of
05:39:44 19 information and -- and some evaluation that was done.

05:39:47 20 Q. In the acquisition's context, would it be routine for
05:39:53 21 this to go on for several months to several years of back
05:39:57 22 and forth?

05:39:57 23 A. I'd say it's not unusual, I mean, in part because, like
05:40:01 24 I said, it's a sales process for Mr. Holtzman's position.
05:40:05 25 And so what's going on I think here is, you know, there's

05:40:09 1 an initial look at it and Mr. -- and you can see from the
05:40:12 2 earlier documents that Mr. Scott looked at it. Clearly, at
05:40:16 3 that point in time, we didn't have interest.

05:40:18 4 Mr. Holtzman is continuing to keep in touch
05:40:21 5 because he's still continuing interest in making sales.
05:40:25 6 He's providing more information, and we're continuing to
05:40:28 7 evaluate that information, and, you know, like I said, we
05:40:30 8 didn't shut the door on it. We're happy to hear what other
05:40:34 9 information -- if they have different reasons to explain
05:40:36 10 why they think we should acquire. We're happy to listen to
05:40:39 11 those. We're open to it.

05:40:42 12 Q. Good afternoon, Ms. Mewes. I'm going to hand you what
05:40:50 13 has been pre-marked as Mewes Exhibit 18.

05:40:53 14 Have you seen this document before?

05:40:54 15 A. Just give me a second.

05:40:55 16 Yes, I have.

05:40:56 17 Q. And it bears the Bates number PMC-APL_03447039.

05:41:10 18 A. Uh-huh.

05:41:10 19 Q. What is this document?

05:41:11 20 A. So there was a point in time where PMC made clear that
05:41:18 21 it was asking Apple to take a license to its portfolio. I
05:41:21 22 think that was in 2011. And so consistent with our
05:41:27 23 practice, we asked for some further information about the
05:41:32 24 allegations. I think it took them a while to get back to
05:41:34 25 us with that, and there was an -- I think it was an

05:41:38 1 in-person meeting. I don't recall. But either way, there
05:41:41 2 was a presentation that PMC provided with some claim
05:41:45 3 charts, and this is our response to the claim charts and
05:41:49 4 presentation that PMC did. It was Apple's response.

05:41:54 5 Q. Was this presentation given at a meeting?

05:41:58 6 A. Yes, that's my understanding.

05:41:59 7 Q. Did Apple take any actions as a result of your first
05:42:04 8 meeting with Mr. Holtzman?

05:42:06 9 A. I think it was a cordial -- as I said, it was a cordial
05:42:12 10 discussion. I think we communicated our views, which were
05:42:15 11 consistent with what we had previously communicated, that
05:42:17 12 we didn't think the patents identified to us were relevant,
05:42:21 13 and we thought that there was pretty significant issues
05:42:25 14 even on 112 without looking further into validity.

05:42:28 15 So I'm not sure that we thought that there was
05:42:32 16 actions out of the meeting. I don't recall if Mr. Holtzman
05:42:37 17 may have suggested providing more information. I'm sure we
05:42:41 18 would have been open to that.

05:42:43 19 Q. The court reporter has handed you Mewes Exhibit 24,
05:42:47 20 bearing Bates No. APL-PMC_00006851.

05:42:55 21 Have you seen this document before?

05:42:56 22 A. Yeah, I think so. There's not much to it.

05:43:03 23 Q. If you could turn to the back, which is the -- the
05:43:06 24 first email in the chain. It looks like there's one dated
05:43:11 25 March 20th, 2014, where Mr. Holtzman is checking to see if

05:43:15 1 there's any new information; is that correct?

05:43:17 2 A. Uh-huh, yes.

05:43:18 3 Q. And on the March 21st email where you said there was
05:43:26 4 nothing new to report at this point, what did you mean by
05:43:33 5 that?

05:43:33 6 A. So I think we had some prior discussions, as I
05:43:38 7 mentioned, with Mr. Holtzman, I think where we had
05:43:41 8 communicated our position basically that we did not think
05:43:44 9 that the -- the five patents that were identified to us
05:43:47 10 were particularly relevant to Apple and that we thought
05:43:54 11 there was generally some significant issues with the
05:43:57 12 portfolio and its application with respect to Internet
05:44:02 13 companies or companies like Apple.

05:44:03 14 And so I think at that point, you know, he was
05:44:12 15 asking, you know, is anything changed. And I think the
05:44:16 16 answer was nothing had changed.

05:44:17 17 Q. In the documents, it looks like you spoke with
05:44:20 18 Mr. Holtzman perhaps in August and December of 2014; is
05:44:23 19 that correct?

05:44:23 20 A. That's generally right. I think so.

05:44:25 21 Q. And there may have been another call or two during the
05:44:28 22 time frame, as well, correct?

05:44:30 23 A. Yeah. Certainly possible.

05:44:33 24 Q. And in these calls, you reiterated what Apple's
05:44:36 25 position was to Mr. Holtzman; is that correct?

05:44:38 1 A. As I said, I don't specifically remember, but this is
05:44:41 2 my recollection of sort of a series of calls is -- is -- I
05:44:45 3 think he understood very well what our position was. We
05:44:48 4 would reiterate it if it was appropriate.

05:44:51 5 Q. Do you remember what the last communication with
05:44:55 6 Mr. Holtzman was?

05:44:56 7 A. He let me know that they had sued us.

05:44:59 8 Q. Do you know what the first point in time was that Apple
05:45:04 9 learned that PMC believes that Apple's products infringe
05:45:09 10 the patents-in-suit?

05:45:11 11 A. So I think with respect to the patents-in-suit, the
05:45:17 12 first time we learned of those was when the complaints --
05:45:21 13 or, rather, at least learned of the assertion of the
05:45:25 14 infringement was with respect to the complaints that were
05:45:28 15 filed.

05:45:29 16 Q. Apple has received the complaint in this case, correct?

05:45:32 17 A. That's right.

05:45:33 18 Q. And PMC is also serving infringement contentions in
05:45:35 19 this case, correct?

05:45:36 20 A. That's my understanding, yes.

05:45:37 21 Q. And both of these documents list specific products,
05:45:42 22 software, et cetera, that Apple sells that PMC asserts
05:45:48 23 infringed its patents, correct?

05:45:49 24 A. So I think that's correct, but...

05:45:53 25 Q. Apple continues to sell the products that are listed in

05:45:58 1 the complaint and infringement contentions, correct?

05:46:04 2 A. I'm not sure exactly which products, but I assume the
05:46:07 3 answer is -- is yes, that the products that, for example,
05:46:11 4 you're talking about an iPhone or iTunes, Apple has
05:46:15 5 continued to sell those products, yes.

05:46:17 6 Q. So Apple continues to sell iPhones, Apple TVs, iPads,
05:46:22 7 et cetera; is that correct?

05:46:23 8 A. That's correct.

05:46:23 9 Q. The court reporter has handed you an exhibit marked
05:46:29 10 Mewes 27 bearing Bates Nos. APL-PMC_003 -- excuse me --
05:46:38 11 636870.

05:46:39 12 Have you seen this document before?

05:46:41 13 A. Yes.

05:46:41 14 Q. What is it, please?

05:46:42 15 A. It is a license between Apple and Intertrust.

05:46:52 16 Q. And was it entered into on or about March 17th, 2014?

05:46:58 17 A. Yes.

05:46:58 18 Q. And on the first page of the license, it references
05:47:06 19 litigation in the Northern District of California, correct?

05:47:09 20 A. Yes.

05:47:10 21 Q. So did Intertrust sue Apple in the Northern District of
05:47:16 22 California regarding the patents that the license relates
05:47:20 23 to?

05:47:20 24 A. I think they made claims -- I think it was like 15 to
05:47:26 25 20 patents and, of course, they're licensing hundreds of

05:47:29 1 patents.

05:47:30 2 Q. But Intertrust did sue Apple in the Northern District
05:47:34 3 of California, correct?

05:47:35 4 A. That's correct.

05:47:35 5 Q. Do you know what this license relates to?

05:47:37 6 A. There's a descript -- general description of the
05:47:43 7 patents by subject matter in the license. Let's see.

05:47:53 8 Yeah. So Page 14 of the license indicates that at least
05:47:59 9 the following areas are included, the digital rights
05:48:03 10 management, secure computing, targeted advertising, big
05:48:07 11 data security and privacy management, and then you can
05:48:14 12 obviously see that there's hundreds of patents listed.

05:48:17 13 Q. And on the first page of the license, it also was
05:48:24 14 associating categories in the second paragraph, correct?

05:48:28 15 A. Yeah, it does.

05:48:29 16 Q. So this license relates to digital rights management
05:48:33 17 among other things, correct?

05:48:35 18 A. Among many other things.

05:48:36 19 Q. What Apple products are covered by this license?

05:48:38 20 A. So if you look on Page 1 of the license, you'll see
05:48:42 21 that the licensed product definition incorporates all Apple
05:48:47 22 products.

05:48:48 23 Q. Do you know what the dollar amount for the Intertrust
05:48:52 24 license was?

05:48:52 25 A. [REDACTED]

05:48:59

1

██████████

05:48:59

2

Q. Which bears Bates No. APL-PMC_00636662.

05:49:07

3

Have you seen this document before?

05:49:09

4

A. Yes.

05:49:11

5

Q. And what is it?

05:49:12

6

A. It's a license agreement between Apple and a company

05:49:17

7

called Digeo Interactive.

05:49:19

8

Q. Do you know how much this was -- the consideration was

05:49:24

9

in this license?

05:49:25

10

A. ██████████

05:49:28

11

(Videoclip ends.)

05:49:28

12

THE COURT: Does that complete this witness by

05:49:32

13

deposition?

05:49:33

14

MR. KLINE: It does, Your Honor.

05:49:34

15

THE COURT: Call your next witness.

05:49:37

16

MR. KLINE: PMC calls Jayna Whitt by deposition

05:49:40

17

designation, Your Honor. The total time of the video is 21

05:49:46

18

and 12 seconds. It's allocated 13 minutes and 17 seconds

05:49:50

19

to the Plaintiff, 7 minutes and 56 seconds to the

05:49:53

20

Defendant.

05:49:54

21

THE COURT: Proceed with this witness by

05:49:56

22

deposition.

05:49:57

23

(Videoclip played.)

05:50:00

24

Q. Good morning, Ms. Whitt. Could you please state your

05:50:04

25

name for the record?

05:50:04 1 A. Good morning. My name is Jayna Whitt.

05:50:07 2 Q. And who is your current employer?

05:50:09 3 A. Apple.

05:50:10 4 Q. And have you worked at Apple since 2006?

05:50:16 5 A. I have, yes.

05:50:17 6 Q. And what's your current title?

05:50:18 7 A. I'm currently principal counsel.

05:50:20 8 Q. What's your general high-level understanding of
05:50:23 9 FairPlay?

05:50:23 10 A. I -- I just think of it as our -- as DRM, digital
05:50:32 11 rights management.

05:50:32 12 Q. And what's digital rights management?

05:50:33 13 A. I think of it as -- I don't know that I can accurately
05:50:46 14 define that. I generally tend to think of it as some sort
05:50:59 15 of security, for digital -- for digital files.

05:51:04 16 Q. So when an individual or entity contacts Apple and they
05:51:14 17 provide a patent that they are interested in potentially
05:51:17 18 licensing to Apple, what does Apple do with that
05:51:22 19 information?

05:51:22 20 A. So after we establish contact, which -- you know, to
05:51:29 21 get the person a point person, that person is basically the
05:51:34 22 manager of the negotiations with that person or the
05:51:38 23 discussions with that person, and -- and it will go from
05:51:40 24 there. So it just depends upon the type of party and what
05:51:44 25 they are willing to share with us in terms of their

05:51:46 1 positions.

05:51:47 2 We're -- we're very much at the beginning
05:51:50 3 listening and just trying to establish, you know, a rapport
05:51:57 4 with people so that we can have a candid discussion.

05:52:00 5 Q. Does Apple look into the -- the patent or patents that
05:52:09 6 the individual provides to Apple?

05:52:11 7 A. Yes, we do.

05:52:15 8 But we also really need to have the dialog with
05:52:20 9 the party about what they believe their patents cover
05:52:24 10 because patents are complicated and get litigated a lot.
05:52:29 11 So they're not always -- we -- we rely a lot on the party
05:52:35 12 to give us their positions and to explain to us, you know,
05:52:39 13 what they invented and explain to us the -- the -- excuse
05:52:44 14 me -- the value that they associate with their -- their
05:52:50 15 offering.

05:52:50 16 Q. If the patent number or numbers is provided in the
05:52:55 17 initial letter, will the individual Apple assigned to that
05:53:01 18 file look at the patents?

05:53:04 19 A. Yes.

05:53:07 20 Q. And will the individual at Apple who is assigned to
05:53:10 21 that file look at the patent family more broadly?

05:53:18 22 A. Generally, they'll consider that, sure. And, again, it
05:53:22 23 kind of depends upon what information the party provides.
05:53:27 24 We always ask for claim charts. We always ask for as much
05:53:32 25 information as, you know, the -- the other party is willing

05:53:34 1 to provide because it really is the only way we can -- we
05:53:38 2 can try to come to -- to a meeting of the minds with
05:53:42 3 parties. So we really ask as much as they can provide.
05:53:46 4 And most -- most parties are -- are pretty good about
05:53:48 5 giving us additional information. And then we can really
05:53:51 6 kind of evaluate it and discuss the merits with the party.
05:53:54 7 Q. Is any effort done to investigate or track any
05:54:05 8 still-pending applications that are related to patents that
05:54:10 9 individuals put forth to Apple?
05:54:13 10 A. No. We usually ask parties to keep us apprised.
05:54:18 11 So once we -- once we make contact and we ask for
12 information, we also --
05:54:21 13 (Interruption by counsel.)
05:54:21 14 MR. KLINE: Pardon me, Your Honor.
05:54:22 15 THE COURT: Stop the video.
05:54:23 16 (Videoclip ends.)
05:54:24 17 THE COURT: Just a moment. Stop the video.
05:54:26 18 MR. KLINE: I have to apologize, Your Honor. Our
05:54:29 19 next -- Mr. Harvey, our next witness, had come in to be
05:54:34 20 prepared to testify. And he's sequestered, so I just
05:54:37 21 wanted to get him out. Pardon me, Your Honor.
05:54:39 22 THE COURT: That's fine. Let's go ahead with the
05:54:41 23 video.
05:54:42 24 (Videoclip played.)
05:54:44 25 A. That -- you know, we're really hoping the party can --

05:54:47 1 can provide us with the support for whatever value they're
05:54:49 2 associating with their patents.

05:54:51 3 And if the discussion ends and -- and we don't
05:54:57 4 have a license, then we usually ask the party to just come
05:55:03 5 back to us if they have, you know, additional information
05:55:06 6 or want to discuss the matter further.

05:55:08 7 Q. So you said that currently Apple doesn't track pending
05:55:12 8 applications, but rather asks the individual with the
05:55:16 9 patent or patents to inform Apple of any new patents or
05:55:21 10 things of that nature; is that correct?

05:55:25 11 A. That's right. It's just not practical for us to be
05:55:27 12 able to -- to track -- there are so many patents that
05:55:31 13 people come to us with. Especially, you know, there's a
05:55:34 14 lot of parties who have large portfolios, and it's not
05:55:38 15 practical for us to do that.

05:55:39 16 So we really have to rely on the party to -- you
05:55:42 17 know, to come back to us and hopefully explain more if
05:55:45 18 something changes anywhere in their portfolio.

05:55:49 19 Q. And has that been Apple's way of handling individuals
05:55:55 20 who come forward with -- with patents for the entire time
05:56:02 21 that you've worked at Apple?

05:56:06 22 A. Yes. That's -- that's the standard -- that's the
05:56:09 23 standard practice since I've been at Apple.

05:56:11 24 Q. Are you aware of any instances where Apple did track
05:56:16 25 pending applications or prosecution -- changes in

05:56:21 1 prosecution history in patents that individuals had brought
05:56:24 2 to Apple to license?

05:56:29 3 A. No, I'm not. Not unless, you know, fortuitously
05:56:34 4 someone may, you know, happen to see additional information
05:56:37 5 or something. I mean, they're not going to ignore relevant
05:56:41 6 information. But because we don't -- it's not practical to
05:56:45 7 track so many patents, again, we just -- we -- we hope that
05:56:48 8 people come back and let us know if there's something
05:56:51 9 significant that they think should change the analysis that
05:56:54 10 we've done.

05:56:55 11 Q. When whoever at Apple has been assigned to a particular
05:56:59 12 file is doing an analysis of a patent or a patent family,
05:57:04 13 at that point in time, does an individual at Apple ever
05:57:11 14 look into pending applications or pending claims?

05:57:13 15 A. So we'll look at anything that someone brings to our
05:57:17 16 attention, including pending applications. And so we
05:57:20 17 will -- we'll review anything a party wants to discuss.

05:57:22 18 And sometimes, you know, that means, like you're
05:57:26 19 referencing, kind of digging into pending applications.
05:57:29 20 And we're ready to do that with someone. We just, you
05:57:32 21 know, need them -- they're their patents, and so they know
05:57:36 22 them and they know, you know, what they think they
05:57:39 23 invented. And so we rely on them to explain it to us, and
05:57:42 24 really, again, show us what they see as the value.

05:57:47 25 Q. Does Apple ever independently look into the pending

05:57:54 1 applications or pending claims in reviewing a patent or a
05:57:57 2 group of patents?

05:57:58 3 A. I don't understand what you -- what you mean.

05:58:05 4 We will -- we will review all of the patents that
05:58:08 5 are brought to our attention, whether they're applications
05:58:12 6 or issued patents.

05:58:14 7 Q. Is there a point in time where that individual needs to
05:58:19 8 discuss the -- the file with someone more senior in terms
05:58:24 9 of making decisions about what to do with a particular
05:58:29 10 file?

05:58:32 11 A. Yes, there may. It just depends on -- it depends on the
05:58:37 12 matter.

05:58:37 13 Some matters are -- are very easily resolved, in
05:58:44 14 the sense that, you know, oftentimes, parties will come to
05:58:47 15 us. They have an offering. We evaluate it, and a lot of
05:58:53 16 the time, it's not applicable or not of interest to us. So
05:58:58 17 some of those -- you know, a lot of those can be dealt with
05:59:02 18 pretty -- relatively quickly.

05:59:05 19 Whereas someone who comes to us with a really
05:59:08 20 large portfolio that they're trying to, you know, ask for
05:59:12 21 something more significant, then we will take as much time
05:59:16 22 as needed to work with that party to analyze it and -- and
05:59:21 23 discuss it fully until we feel like we've exhausted the
05:59:25 24 possibilities.

05:59:27 25 Q. As part of that analysis, does Apple look into or

05:59:33 1 consider what the length of the term left on the patent is?

05:59:38 2 A. We -- we -- we will look at all of those factors. So

05:59:46 3 if we're really engaged in a discussion with someone and

05:59:50 4 they've -- you know, we're going -- we're really looking

05:59:53 5 into the patents, we will consider all sorts of things.

05:59:57 6 We'll consider the strength of the patents, the

06:00:00 7 prior art, you know, whether -- we have a lot of our own

06:00:04 8 patents, you know, what our development history is. There

06:00:07 9 are a host of things.

06:00:08 10 And we always consider, of course, what --

06:00:10 11 anything the party wants to bring to our attention. And,

06:00:14 12 you know, we try to take into account the party's position

06:00:18 13 as well to try to reach compromises in every case, no

06:00:22 14 matter what the vantage point of the other party is, so we

06:00:26 15 try to understand that.

06:00:27 16 Q. And in terms of -- of interacting with individuals who

06:00:30 17 come to Apple with patents, is there a practice of what

06:00:37 18 means of communication that the person assigned to the file

06:00:40 19 will using in terms of telephone calls versus emails or

06:00:46 20 in-person meetings?

06:00:48 21 A. It really depends. It really depends on the party

06:00:55 22 who's coming to us. They usually have requests to

06:00:59 23 communicate in some -- in some fashion, you know, to their

06:01:02 24 preference.

06:01:02 25 Maybe they're far away and they don't want to

06:01:06 1 travel and they just want to talk to us by phone. And
06:01:10 2 that's fine, too. We'll accommodate pretty much anything
06:01:13 3 that anyone asks for in terms of meetings or discussions,
06:01:16 4 calls, things like that. We just try to be responsive and
06:01:21 5 we try to listen and understand so that if there's any
06:01:23 6 chance we can, you know, resolve things with a party, we'll
06:01:26 7 do that.

06:01:27 8 Q. Ms. Whitt, when did you first become aware of PMC?

06:01:30 9 A. I'm not sure. I don't think I was aware of PMC until
06:01:50 10 around the 2013 time frame. But I'm -- I would need to
06:01:56 11 look back to be sure.

06:01:57 12 Q. And do you recall in the 2013 time period what
06:02:06 13 interactions you had with PMC?

06:02:08 14 A. I remember meeting Mr. Gerald Holtzman and speaking
06:02:17 15 with him a few times.

06:02:21 16 Q. At the time when you began interacting with PMC in
06:02:28 17 approximately 2013, did you review those previous contacts
06:02:32 18 between Apple and PMC?

06:02:33 19 A. My normal practice would be to do so at the time. And
06:02:39 20 I also would have relied on Heather Mewes, who was on my
06:02:46 21 team working on this matter, to review, evaluate, and --
06:02:52 22 and brief me on what her evaluation was.

06:02:58 23 Q. Did Ms. Mewes begin interacting with PMC prior to when
06:03:03 24 you did?

06:03:05 25 A. I believe so, yes. At least one meeting anyway.

06:03:13 1 Q. And prior to you and Ms. Mewes's involvement with PMC,
06:03:22 2 who at Apple had been involved in the communications with
06:03:26 3 PMC?

06:03:29 4 A. I think it was primarily Ed Scott. And then it -- for
06:03:39 5 a short time it was Patrick Murphy. And for some of the
06:03:43 6 time that spans -- that overlaps both of them, I believe
06:03:48 7 Boris -- Boris Teksler was also involved.

06:03:51 8 Q. And what group was Mr. Teksler in?

06:03:53 9 A. Boris was in the licensing and strategy team. He
06:03:57 10 headed up that team for a number of years.

06:04:00 11 And Ed Scott, I believe, got the licensing team
06:04:07 12 involved when -- when PMC indicated that -- that it thought
06:04:18 13 we should consider a license versus buying the assets,
06:04:22 14 because the first inquiry was to sell the assets.

06:04:25 15 Q. And do you recall approximately when that first inquiry
06:04:29 16 was?

06:04:32 17 A. I think it was in 2008, if my memory is serving
06:04:40 18 correctly.

06:04:41 19 Q. And you said that you -- you and Ms. Mewes took over
06:04:48 20 sometime in approximately 2013; is that correct?

06:04:51 21 A. I believe so, yes.

06:04:52 22 Q. And I've marked that as Exhibit 1 for this deposition,
06:04:58 23 for the record.

06:05:01 24 Is this an email that you sent to Mr. Holtzman
06:05:05 25 from PMC in 2013?

06:05:08 1 A. Yes, it is. It was after our meeting.

06:05:10 2 Q. And if you look at the -- the bottom portion of the
06:05:14 3 document, do you see that there's an email from
06:05:17 4 Mr. Holtzman to you?

06:05:18 5 A. Yes, dated September 11th.

06:05:24 6 Q. And do you recall whether this meeting was in person?

06:05:30 7 A. Yes, it was, and it was in our office in Sunnyvale.

06:05:35 8 Q. Do you recall who was present at the meeting?

06:05:42 9 A. Heather Mewes, myself, and we had a summer intern,
06:05:49 10 Marta Belcher.

06:05:53 11 Q. And was this the first time that you met Mr. Holtzman?

06:05:56 12 A. I believe so.

06:05:59 13 Q. Do you remember whether PMC discussed its patents with
06:06:07 14 you at the meeting?

06:06:08 15 A. Do you mean substantively?

06:06:10 16 I don't believe that it was a substantive patent
06:06:13 17 discussion.

06:06:13 18 Q. Do you have recollection of how long the meeting was?

06:06:18 19 A. I don't recall. It would have been maybe an hour,
06:06:25 20 maybe an hour and a half.

06:06:26 21 Q. Do you recall if you did any preparatory work prior to
06:06:31 22 this meet in September 2013 with Mr. Holtzman?

06:06:38 23 A. I normally would have info -- yeah, I normally would
06:06:45 24 have had someone provide me information, or I would have
06:06:48 25 looked things up prior to a meeting of this nature. So I

06:06:52 1 likely did.

06:06:53 2 I don't have a distinct memory of -- sitting here
06:06:58 3 right now, what I did or didn't review before the meeting.
06:07:03 4 But I'm sure I would have tried to, you know, understand
06:07:06 5 who I was meeting with beforehand and, you know, what the
06:07:10 6 general matter was about.

06:07:11 7 Q. Do you recall whether you ever looked at any claim
06:07:17 8 charts that PMC had prepared for Apple?

06:07:21 9 A. I remember that we received them. I don't have -- I'm
06:07:32 10 not sure that I recall -- I don't know that I recall the
06:07:35 11 specifics of -- of them at all.

06:07:40 12 Q. Do you know whether Apple ever put together any
06:07:43 13 presentations or information regarding its analysis of
06:07:46 14 PMC's claim charts?

06:07:47 15 A. Yes. So before we met with Mr. Holtzman, we did, you
06:07:59 16 know, review the communications that the companies had had
06:08:03 17 thus far. And, yes, we would have looked at all of that
06:08:07 18 material and understood what the status was as much as we
06:08:13 19 could have before that meeting.

06:08:16 20 Q. So do you have in front of you a document with
06:08:19 21 beginning Bates PMC-APL_03447039 through 7068 entitled
06:08:35 22 Personalized Media Communications Discussions, November
06:08:37 23 14th, 2011?

06:08:39 24 A. Yes, I -- I have that. It's -- it looks like a 30 --
06:08:44 25 30-page slide deck.

06:08:45 1 Q. And would this have been prepared by Apple?

06:08:47 2 A. Yes, this was -- so this was prepared by Apple after
06:09:01 3 Personalized Media Communications gave us some claim charts
06:09:04 4 to review. We -- and we -- we analyzed those.

06:09:07 5 And this is the presentation back to them
06:09:11 6 explaining our positions with respect to the claim charts
06:09:17 7 and the potential that we would need to take a license
06:09:20 8 versus just, you know, sort of want to, even though we're
06:09:23 9 not practicing.

06:09:24 10 So we looked at those -- at those claim charts and
06:09:28 11 analyzed them. And this would be -- this is the
06:09:31 12 presentation that we gave to PMC to -- to help them
06:09:35 13 understand, you know, why we seemed to make the assessment
06:09:39 14 that we did.

06:09:40 15 Q. And is the conversation that Mr. Holtzman was referring
06:09:43 16 to having occurred in October of 2013 one of those
06:09:48 17 conversations that -- that you made reference to?

06:09:50 18 A. Yes, it is.

06:09:51 19 Q. Do you have any recollection of what you discussed on
06:09:57 20 the call on October 21st with Mr. Holtzman?

06:10:03 21 A. I recall having a conversation about what we thought of
06:10:12 22 the applicability of the patents -- or I should say that
06:10:16 23 the patents -- we didn't believe that the patents were
06:10:18 24 applicable to our business.

06:10:18 25 And so, you know, we had discussions about whether

06:10:24 1 we could attribute the kind of value that Mr. Holtzman was
06:10:32 2 assigning to the patents.

06:10:34 3 And we -- after doing our evaluation, we didn't --
06:10:38 4 we didn't agree with the way that the claim charts -- what
06:10:45 5 the claim charts were pointing to, and -- and we didn't
06:10:48 6 believe that the patents were applicable to our business at
06:10:52 7 that time.

06:10:52 8 Q. Is it standard practice when Apple enters into a patent
06:10:56 9 license to license all of the patents that a patent hold --
06:11:06 10 that a patentholder may own?

06:11:09 11 A. In normal instances, yes. We really try to reach
06:11:15 12 agreement with parties once for everything so that we don't
06:11:17 13 have to, you know, have surprises later after we've, you
06:11:24 14 know, resolved and are licensed, you know, we generally
06:11:30 15 want it -- want it to be a real resolution.

06:11:33 16 So it's usually all of the patent portfolio, but
06:11:37 17 sometimes it can be less. So even though the norm is -- is
06:11:42 18 everything, there are exceptions.

06:11:44 19 (Videoclip ends.)

06:11:44 20 THE COURT: Does that complete this witness by
06:11:49 21 deposition?

06:11:49 22 MR. KLINE: It does, Your Honor.

06:11:50 23 THE COURT: All right. Thank you.

06:11:51 24 Ladies and gentlemen of the jury, we're going to
06:12:01 25 stop for the day at this point.

06:12:03 1 I'm going to ask you, as you leave in a few
06:12:06 2 minutes, if you'll take those notebooks and close them and
06:12:09 3 leave them on the table in the jury room. I'm going to
06:12:13 4 remind you of all the instructions I've given you,
06:12:15 5 including among them not to discuss this case with anyone,
06:12:20 6 and remember, unless you live at -- unless you live alone
06:12:24 7 when you get home, you're going to get a question right off
06:12:27 8 the bat. Don't even try to answer.

06:12:29 9 Please follow all the instructions I've given you.
06:12:33 10 Please plan to be here tomorrow morning assembled and ready
06:12:37 11 to go at 8:30. We're going to do our best on our end to be
06:12:40 12 ready to go with you at 8:30 tomorrow morning. Travel
06:12:44 13 safely to your homes.

06:12:47 14 And with that, ladies and gentlemen of the jury,
06:12:48 15 you're excused until tomorrow morning.

06:12:49 16 COURT SECURITY OFFICER: All rise.

06:12:50 17 (Jury out.)

06:13:15 18 THE COURT: Be seated, please.

06:13:15 19 Counsel, for your benefit, the Plaintiff has used
06:13:24 20 1 hour and 31 minutes today of their designated trial time.

06:13:30 21 And the Defendants have used 45 minutes of their
06:13:33 22 designated trial time for a total of 2 hours and 16 minutes
06:13:37 23 of total designated trial time used today.

06:13:39 24 Let me remind counsel to continue with your
06:13:44 25 diligent meet and confer efforts so that hopefully tomorrow

06:13:48 1 morning we'll have hopefully a small number of disputes, if
06:13:53 2 any, to go over. I'll be available in chambers by 7:30 to
06:13:58 3 meet with you if that's necessary.

06:13:59 4 Mr. Kline, I assume you're going to begin tomorrow
06:14:04 5 with Mr. Harvey; is that correct?

06:14:07 6 MR. KLINE: That's correct, Your Honor. And he'll
06:14:10 7 be live obviously.

06:14:11 8 THE COURT: All right. Are there any issues that
06:14:14 9 either the Plaintiff or Defendant need to raise with the
06:14:16 10 Court before we recess for the day?

06:14:18 11 MR. KLINE: Not that I know of, Your Honor.

06:14:19 12 THE COURT: Anything from Defendant?

06:14:25 13 MR. AROVAS: No, Your Honor.

06:14:25 14 THE COURT: All right. Counsel, we stand in
06:14:26 15 recess until tomorrow morning.

06:14:29 16 MR. KLINE: Thank you.

06:14:30 17 COURT SECURITY OFFICER: All rise.

06:14:31 18 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
OFFICIAL REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2021

3/15/2021
Date